

1904-071  
Lee Co.

Chancery Causes. Maggie Zion vs. L. T. Hyatt, trst. &  
L. T. Hyatt &c vs. Maggie Zion &c

Folder 1 of 2

Hurst, Allen, Graham, Pennington Cap Bank, Litton, Orr, Wampler,  
McClure, Tritt, Thompson, Smith, Smyth, Hughes, Carter, Hobbs,  
Herndon, Wolfe

1 Plat

CA-Contract Dispute  
T-Property  
Women

-Deed



To the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia.

Your oratrix, Maggie Zion, humbly complaining respectfully represents that on June 28th, 1897, her father Dixon S. Litton, by deed of that date, conveyed to her and her husband, Geo. W. Zion, jointly, four certain tracts or parcels of land, which are fully described in said deed, which is of record in Lee County Deed Book No. 34, <sup>p. 139</sup> a copy whereof is herewith filed <sup>^</sup>marked "Exhibit A" as part of this bill. Said conveyance was made as an advancement to your oratrix <sup>^</sup>to the extent of Two Thousand Seven Hundred Dollars (\$2,700.00) by the said Dixon S. Litton.

Your oratrix would further show that afterwards she and her said husband Geo. W. Zion by deed dated \_\_\_\_\_ and duly recorded in the Clerks Office of Lee County, in Deed Book \_\_\_\_\_ page \_\_\_\_\_, divided the real estate so conveyed to her and her said husband as aforesaid, under which division or partition your oratrix received the tract described in said deed of June 28th, 1897 as containing Five Acres and 53 poles, and also the tract therein described and supposed to contain One Hundred and Thirty Two (132) acres, and also Nineteen and One-Half (19 1/2) acres of the twenty six acre tract, described in said deed of June 28th, 1897, and under which said division or partition her said husband, the said Geo. W. Zion, received the residue of the said real estate so conveyed to her and her said husband by the said Litton and Wife as aforesaid. All which will more fully and at large appear by reference to said deed of partition, a copy whereof is herewith filed marked "D" as part of this bill.

Your oratrix alleges that the property, which she received as aforesaid, in, under and by the partition ~~as~~ aforesaid,



was and is her statutory separate estate, and that she has a right to prosecute suit, in relation thereto, in her own name, she being over the age of twenty one years.

Your oratrix will now show your honor that her said husband, Geo. W. Zion, sometime in the year 1901, or possibly as far back as the year 1900, borrowed from W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham, and M. K. Graham, partners doing business as bankers under the firm, name and style of Pennington Gap Bank, of Pennington Gap, Virginia, the sum of Seventeen Hundred Dollars (\$1700.00), which he had failed to pay when and as the same became due, and the said Pennington Gap Bank became very anxious to obtain from the said Geo. W. Zion some additional security, as there arose some dispute as to the liability of one R. E. Litton, whom the said bank claimed to be an endorser of or surety on the note which he, the said Geo. W. Zion, had executed to the said bank, and as your oratrix believes and charges, the said bank even made threats against the said Geo. W. Zion, possibly of intended prosecutions against him, at all events, the said bank brought ~~was~~ great influence to bear upon the said Geo. W. Zion inducing in him a great desire to give the said bank further security, and thereupon the said bank, through one of its members A. G. Hyatt, drew up the deed of trust hereinafter referred to, and delivered the same to the said Geo. W. Zion, urging him very strongly to secure its execution, as your oratrix believes and charges.

At all events, on the 15th day of January, 1902, her said husband accompanied by W. T. Orr, Esq., a Justice of the Peace of Lee County, Virginia, came to your oratrix with a paper, and her said husband Geo. W. Zion represented to and as-



sured your oratrix that the said paper was a deed of conveyance of some lots, which her said husband owned, or claimed to own, in the town of Big Stone Gap, Wise County, Virginia, and which he claimed and represented he was selling and conveying to J. F. Bullitt, Esq., and represented that such was the sole effect of the paper thus presented, and to which her said husband then and there requested her signature and acknowledgment. The said Justice Orr, had never read the said instrument, and said Geo. W. Zion, had made to him the said Orr the same representation as to the contents of the said instrument that he made to your oratrix, and, consequently, the said Orr did not then and there correct, or in any way dispute the statement of the said Geo. W. Zion. Your oratrix did not read the said instrument, nor was the same read to her by any one; and, relying solely upon the representation of her said husband, acquiesced in and tacitly endorsed by the said Justice, she did sign and acknowledge the said instrument, having no other idea than that it was as represented solely a deed for some town lots in Big Stone Gap, Wise County, Virginia. Thereupon her said husband Geo. W. Zion took possession of said instrument and returned it to the said Pennington Gap Bank, and the said bank had the same recorded in the Lee County Clerks Office, In Deed Book 38, page 235, a copy whereof is herewith filed marked "C", as part of this bill.

As will be seen by reference to said instrument, Exhibit "C", instead of being, as it was represented, a deed for some town lots in the town of Big Stone Gap, it turns out to be a conveyance of all the right, title and interest of your oratrix in and to the real estate so conveyed to her and her husband by the said A. S. Littton and wife as aforesaid.

*In trust to Secure said Bank \$1500. the original \$1700 debt of said husband by the said A. S. Littton and wife as aforesaid.*

*Having been paid by said Geo. W. Zion down to \$1500. before said deed of trust was executed*



Had your oratrix known the true contents of the said instrument, she never would have executed the same, and she only learned recently of the fraud that had thus been perpetrated upon her and her rights, in procuring her signature and acknowledgment to an instrument wholly and entirely different from what it was represented to her as aforesaid that she was executing, and which she believed she was executing.

The prayer of your oratrix, therefore, is that the said Geo. W. Zion, L. <sup>J</sup>. Hyatt, Trustee, and the said W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham, M. <sup>K</sup> Graham, partners doing a banking business under the firm name and style of Pennington Gap Bank, be made parties defendant hereto; and that they be required to answer this bill, but not on oath, answer under oath being hereby expressly waived; that proper process issue; and that, on a hearing, the said deed of trust, so procured by fraud and misrepresentation, as aforesaid, be set aside, vacated and annulled, at least so far as your oratrix is concerned; and that all such other further and general relief be afforded your oratrix as the nature of her case may require, or to equity shall seem meet.

And, as in duty bound, your oratrix will ever pray,  
etc.

J. C. Noel  
+  
Edw. Fulton



# Peffer Costs

Clerk 9.48  
 Tax 1.50  
 Shoff 5.70  
 atty 15.00  
 Co Clerk 2.65  
 J. P. 6.00  
 N P 22.50  
 wits 8.00  
 Estimated 6.00  
 \$76.83

# Maggie Jones Costs Recovered

Clerk 9.18  
 Tax 1.50  
 atty 15.00  
 Co C 2.65  
 N P 11.25  
 J P 4.50  
 Shoff 4.00  
 wits 4.50  
 \$52.48

# Maggie Jones

vs Bill Dr Chan

L. T. Hyatt, Trustee et al

1902 2nd May rules bill  
 filed Spa executed &  
 Deere Nisi  
 " 1st June rules D. N.  
 Confirmed & Cause set  
 for hearing



Lee Circuit Court.

Maggie Zion,

Plaintiff.

v.

L. T. Hyatt, Trustee, et al,

Defendants.

ANSWER.

The joint and separate answer of L. T. Hyatt, Trustee, W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham and M. K. Graham, to a bill of complaint exhibited against them and another by Maggie Zion in the Lee Circuit Court, under the above styled caption.

Not waiving the demurrer filed herein, but relying thereon, these respondents answering say:

It is true that D. S. Litton made the deed to the plaintiff and her husband, George W. Zion, for the lands, as set out in Exhibit "A" filed with the bill. It is likewise true that the plaintiff and her said husband executed the deed of trust to secure the Pennington Gap Bank, as set out in Exhibit "C" filed with the bill, and true that the plaintiff and her husband made the deed of partition, as is set out in Exhibit "D" filed with the bill. The records speak for themselves, and these respondents know nothing about these matters otherwise than is shown by said record, except with reference to the deed of trust in question, which will be referred to more fully hereinafter.

It is true that the said George W. Zion was indebted to the Pennington Gap Bank ( which is a partnership composed of the individuals as set out in the bill ) substantially in the manner and amounts as detailed in the bill, and true that there arose some question as to the liability of R. E. Litton, as an endorser on the sums owing to the said Bank by the said Zion; but it is not true that the said Bank, or any of its officers or agents, ever made



any threats against the said George W. Zion, or ever brought great influence to bear upon him, inducing in him the great desire to give the further security referred to. The facts with regard to this are, that when respondent A. G. Hyatt, Cashier of the bank, called the attention of Mr. R. E. Litton, as a result of inquiries first made by Mr. Litton, to the point of the indebtedness of the said Zion and Litton to the bank, said Litton claimed that he did not indorse the notes held by the bank, but stated to the said Hyatt, Cashier, that he would speak to Mr. Zion about the matter, and he thought he would arrange to secure the debt by a deed of trust upon his lands, and, as a result of this interview, and without any pressure brought to bear by any of these respondents, the said Zion came to the said Bank, and requested that a deed of trust be drawn up and a renewal note arranged for \$1500.00 of his indebtedness, and stated that he would get his wife to unite with him in the deed of trust conveying their joint real estate. Respondent A. G. Hyatt did thereupon draw up the deed of trust in controversy, and gave it to the said Zion, and the said Zion a few days afterwards returned it to the said A. G. Hyatt for the said bank, with his own and his wife's signatures and acknowledgments thereto, and said respondent thereupon had the same placed of record in the usual course of business.

These respondents all say that they know nothing whatever of the charges made by the said plaintiff as to the misrepresentations and fraud practiced upon her by her said husband. No one of them knew of any such intention or purpose on the part of the said George W. Zion prior to his procuring the said deed of trust, and no one of them knew that any such charges were made until shortly prior to the bringing of this suit. No one of them had any knowledge of the facts alleged by the plaintiff, if they be facts, until shortly prior to the filing of this suit. No one of respondents induced



any of such representations, or knew thereof, or colluded therein. The said trust deed was taken in the ordinary course of business, and in order to secure a just debt due from the said Zion to the said bank, and respondents are advised that under these circumstances even if the allegations made in the plaintiff's bill be true, the plaintiff herself must suffer for her own negligence, and not these respondents. *The said plaintiff is an intelligent and an educated woman* These respondents, however, do not admit the truth of any of the allegations made by the plaintiff on this point, but require strict proof thereof. #

It will be seen from an inspection of Exhibits "C" and "D", that the trust deed in controversy was given long prior to the said Partition deed, and these respondents are advised that their rights cannot be prejudiced by this alleged partition between the said plaintiff and her husband. They are advised that, in the event the plaintiff should succeed in setting aside the said trust deed as to her interest in the real estate in controversy, these respondents have a right to enforce the lien of their trust deed against the interest of the said George W. Zion therein, and they state and charge that his said interest therein is an undivided one-half, and they further state and charge that the partition, as made between the plaintiff and her husband, was not a fair and equal partition, but that the part assigned to the plaintiff is worth double as much as the part assigned to her husband, and respondents are advised that while incumbrancers must respect a fair and equitable partition, they are entitled to have such a partition made, and that a Court of Equity will administer such relief.

Respondents will further state that the note given by the said George W. Zion to the said bank is now due and unpaid and payable, no part thereof having ever been paid, and respondents desire in this suit to foreclose the lien of their said trust deed. They further state that there are other liens against the said property, both

# And your respondents allege that, relying upon the genuineness of said deed of trust and the security given thereby, they surrendered to said Geo W. Zion the note for \$1700.00 of which said R. C. Lutton was not liable. C. Lutton was, in answer, and respondents never admitted that said R. C. Lutton was not liable as endorser of said note, and the question of his liability thereon has never been determined.



against the interest of the plaintiff and the interest of her husband, George W. Zion, and they are advised that a reference to a commissioner on liens will be necessary in this cause.

Respondents therefore pray that this answer be treated as a cross-bill against the plaintiff and their co-defendant, George W. Zion, in so far as may be necessary to effect the affirmative relief above referred to, and that said parties be required to answer the same, but not on oath; that at a final hearing your Honor will decree a sale of the entirety of the said land, if necessary to satisfy the deed of trust in controversy, or in the event of the relief prayed for by the plaintiff, that the partition of the land in controversy between the plaintiff and her husband be set aside or reformed, so that the said George W. Zion may be assigned a full and equal one-half interest therein, and that respondents be decreed a sale thereof to satisfy the debt due to the said bank, and that all orders of reference and other steps necessary to this end, be taken by decrees of your Honor; and for such other, further and general relief as they may be entitled to. And respondents will ever pray, &c.

*R. T. Irvine, &  
L. P. Hyatt  
for said defts.*



Maggie Jew,

o { Answer & Cross Bill

L. T. Hyatt, Jr., et al,

Filed in open Court  
and by leave thereof  
Nov 12<sup>th</sup> 1902

A. B. Munsey Clerk



To the Honorable H. A. W. Skeen,

Judge of the Circuit Court of Lee County, Virginia.

The Demurrer and Answer of Maggie Zion to the cross-bill of complaint filed by the Pennington Gap Bank in the original suit pending in your Honor's court wherein your Respondent is complainant and George W. Zion and said bank are defendants.

Respondent says that said cross-bill is not sufficient in law, and for cause of demurrer thereto respondent shows that the allegation of the said cross-bill constitute entirely a new and distinct matter from that set up in the original bill, and is no way an aid of the defense to the said original bill, and because the said cross-bill is otherwise uncertain, informal, and insufficient.

But should answer be required, respondent states: That the partition which was made between the respondent and the said George W. Zion, and which was carried out by the execution of the deed of March 15, 1902, was a fair and equal partition, and was based upon the judgment of three impartial citizens of Lee County, who were selected to make the said partition, and who decided to and did make the same exactly as the said deed of March 15, 1902, makes the same. All allegations of the said cross-bill to the contrary, are untrue and are expressly denied, and respondent expressly denies that R. E. Litton was an indorser of a note of the said George W. Zion, and denies that the said R. E. Litton was in any way liable thereon, and respondent alleges that that cross-complainant well knew that he was not so liable.

Respondent supposes that the note given by the said George W. Zion to said bank is now due and unpaid and payable, and respondent will state further that the land set apart to the said George W. Zion in the said partition deed of March, 1902, is amply sufficient to pay the debt due the said bank, and all other liens against it, which were acquired prior to the said partition, or indeed, which have been acquired since. The only liens against said property



as respondent is advised, are, first, a deed of trust executed to M. F. Litton, Trustee, to secure a debt due and owing by respondent and said George W. Zion to Minerva Susong, of \$1000.00, with interest thereon from the \_\_\_\_ day of \_\_\_\_\_, one-half of which should be paid by the said George W. Zion, and the other half by this respondent, and should in equity be a charge equally upon the respective portions of the land that your respondent and the said George W. Zion got in the said partition, that is to say, that the said George W. Zion's part of the said land should be charged with \$500., and the interest thereon from the said \_\_\_\_ day of \_\_\_\_\_ until paid, and your respondent's part of said land should be held liable for the other \$500. thereof, with like interest. Second, the deed of trust in controversy in this case, which was executed to secure the said Pennington Gap Bank, which, as respondent is advised, is not binding upon her, the same having been procured by fraud, as set out in the original bill, but even if this were not true, respondent is advised that as to this deed of trust a court of equity will treat the said George W. Zion as principal and your respondent as surety for the payment of the said bank debt, and will, upon the familiar equitable principal, direct that the portion of said land which was assigned to said Zion in the said partition be first subjected, and that your respondent's land would not in any event be subjected for the said bank debt until the said land of the said George W. Zion was first exhausted. Third, a deed of trust executed by George W. Zion to \_\_\_\_\_, Trustee, dated \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, wherein the said George W. Zion conveys the real estate which he got in the partition aforesaid in trust to secure a debt to E. W. Pennington of \$\_\_\_\_\_, with interest thereon from \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, until paid. Fourth, a judgment rendered by the County Court of Lee County in favor



of the administrators of A. L. Pridemore, deceased, against said George W. Zion, at the September term, 1902, of said court, for the sum of \$\_\_\_\_\_, with interest thereon from the \_\_\_\_ day of \_\_\_\_\_ until paid, and \$\_\_\_\_\_, costs. The two last mentioned liens in favor of E. W. Pennington, and the administrator of A. L. Pridemore, deceased, have been acquired since the partition of March, 1902, and the priorities of lien on the said George W. Zion's part of said real estate are as follows: First, the said Susong lien; second, the said Pennington Gap Bank lien; third, the said E. W. Pennington lien; and lastly, the lien in favor of the said administrators of A. L. Pridemore, deceased.

There is therefore no trouble in the way of the trustee, under either of the said deeds of trust, executing and carrying out the trust according to the terms thereof by an immediate sale of the property of George W. Zion, and there certainly is no difficulty in the way of L. T. Hyatt, Trustee, advertising and selling the said real estate of George W. Zion under the deed of trust executed to secure said Pennington Gap Bank. Respondent cannot therefore see any necessity for a reference to a commissioner, or any further delay in and about selling and disposing of George W. Zion's real estate to pay his debts.

And now, having answered the said cross-bill, or so much thereof as respondent is advised it is necessary or material for her to answer unto, and hereby denying each allegation of said cross-bill not hereinbefore admitted or denied, prays to be hence dismissed, with her costs in this behalf expended.



Maggie from  
ans & answer to  
Cross Bill  
L. T. Hyatt & Co

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Filed in open court  
and by leave thereof  
This the 13<sup>th</sup> day of Nov. 1902  
A. B. Munsey Clk.

JONESVILLE, VIRGINIA.  
ATTORNEY AT LAW.  
L. T. HYATT.



Lee Circuit Court.

Maggie Zion,

Plaintiff.

v.

L. T. Hyatt, Trustee, et al,

Defendants.

DEMURRER.

Defendants, L. T. Hyatt, Trustee, W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham and M. K. Graham, to a bill filed against them in the Lee Circuit Court, under the above caption.

For demurrer, these respondents say that said bill is not sufficient in law; and for ground of demurrer, they say that the said bill of complaint does not allege participation in or knowledge of the fraud complained of by the plaintiff on the part of these respondents, and does not allege in terms nor facts from which the inference must be drawn, that George W. Zion was the agent of the Pennington Gap Bank, in procuring the deed of trust sought to be set aside as to the plaintiff. The facts alleged in the bill show that Zion acted for himself, and on his own responsibility, and that the plaintiff, if she was defrauded at all, was defrauded through her own negligence, and through no default or misconduct on the part of these respondents, or any of them. If the said plaintiff put it in the power of the said George W. Zion to commit the fraud complained of, she should, as between two innocent parties, be the one to suffer.

*Hyatt & Irvine  
For Resp'ts*



plaintiff put it in the power of the said George W. Zion to commit on the part of these respondents, or any of them. It the said through her own negligence, and through no default or misconduct and that the plaintiff, if she was defrauded at all, was defrauded show that Zion acted for himself, and on his own responsibility, set aside as to the plaintiff. The facts alleged in the bill Pennington Gap Bank, in procuring the deed of trust sought to be inference must be drawn, that George W. Zion was the agent of the respondents, and does not allege in terms nor facts from which the said bill of complaint does not allege participation in or knowledge and intent in law, and for ground of demurrer, they say that the respondents, these respondents say that said bill is not

inference must be drawn, that George W. Zion was the agent of the respondents, and does not allege in terms nor facts from which the

and bill of complaint does not allege participation in or knowledge

respondents say that said pill is not

no objection

Zion,

Demurrer

L. J. Nyatt, Jr., Cal,

ДМТОН: ИГ

Defendants, J. T. Hyatt, Trustees, W. S. Hurst, A. G. Hyatt,



Maggie Zion, . . . . . Plaintiff.

vs. (In Chancery) Decree confirming sale &c.

L. T. Hyatt, Trustee &c., et al., . . . . . Defendants.

This cause came on this the 15<sup>th</sup> day of February, 1904, to be heard upon the papers formerly read therein and the report of L. T. Hyatt, Special Commissioner, filed on the 22 day of Jan, 1904, showing full disbursements by him of the sums which he was directed to disburse by the decree entered in this cause on the 13th day of July, 1903, in the following manner: paid A. B. Munsey, clerk \$13.50, paid to B. M. Morgan, clerk, \$2.65; paid to J. C. Noel, Atty's. fee, \$15.00; paid to L. T. Hyatt Atty's. fee, \$15.00; paid to J. F. Skaggs, J. P., \$6.00; paid to Mayo Cabell N.P. \$11.25; paid to G. W. Burgan, D.S. \$1.00; paid to J. Morrison Smyth, witness, 50¢; paid to John Smyth, witness, ~~25¢~~ \$1.00; paid to T. P. Hughes, Wit., 50¢; paid to B. F. Thompson, Wit., 50¢; paid to C. B. Tritt, Wit., 50¢; ~~p~~ paid to W. T. Orr, Wit., 50¢ paid to R. E. Litton, wit. 50¢; paid to J. A. Wampler, wit. 50¢; paid to John Smyth, wit. 50¢; paid to J. E. Hobbs, wit. 50¢; paid to Larken Herndon, wit. 50¢; paid to J. B. Wolf, wit. 50¢; paid to D. S. Litton, wit. 50¢; paid to James E. Tritt, wit. 50¢; paid to W. E. Thompson, wit. 50¢; paid to D. B. Byington, D. S. \$4.50; paid to L. T. Hyatt, Coms. of sale \$43.00; paid to Minerva Sousong \$606.00; paid to Pennington Gap Bank \$968.69; and was argued by counsel.

On consideration thereof and no exceptions having been taken or filed to the said report, although the same has been filed the time required by law, it is adjudged, ordered and decreed, that the said report and the disbursements shown thereby, be and they are hereby confirmed; ~~and~~ the cause is continued.



be and they are hereby confirmed; and the cause is continued.

creed, that the said report and the disbursements shown thereby,

filed the time required by law, it is adjudged, ordered and de-

creed, that the said report, although the same had been

On consideration thereof and no exceptions having been

cash bank \$366.63; and was argued by counsel.

of sale \$13.00; paid to Minerva Souders \$606.00; paid to Pennington

paid to D. E. Livingston, D. S. \$4.50; paid to L. T. Hyatt, Coms.

paid to James H. Triff, wit. 50¢; paid to W. H. Thompson, wit. 50¢;

paid to J. B. Wolf, wit. 50¢; paid to D. S. Hutton, wit. 50¢;

paid to J. B. Hobbs, wit. 50¢; paid to Marken Herndon, wit. 50¢;

paid to J. A. Wampler, wit. 50¢; paid to John Smith, wit. 50¢;

paid to W. T. Orr, wit. 50¢; paid to R. E. Hutton, wit. 50¢;

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paid to T. P. Hughes, wit. 50¢; paid to John Smith, wit. 50¢;

paid to J. B. Wolf, wit. 50¢; paid to John Smith, wit. 50¢;

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paid to T. P. Hughes, wit. 50¢; paid to John Smith, wit. 50¢;

paid to J. B. Wolf, wit. 50¢; paid to John Smith, wit. 50¢;



Maggie Zion, . . . . . Plaintiff..

vs. (In Chancery) Decree confirming sale &c.

L. T. Hyatt, Trustee &c., et al., . . . . . Defendants.

This cause came on again this the 13<sup>th</sup> day of July, 1903, to be heard upon the papers fromerly read in the cause, and the report of L. T. Hyatt, special commissioner, showing a sale of the lands of G.W. Zion to A. G. Hyatt at the price of seventeen hundred dollars (\$1700.00), which report was filed on the 18th day of June, 1903, and was argued by counsel. On consideration of all which, and it appearing to the court that the said report has been filed the time required by law, and that no exceptions have been taken of filed thereto, it is adjudged ordered and decreed that the said report and the sale therein reported be confirmed; and that the said L. T. Hyatt, special commissioner, disburse the sum of five hundred and sixty-six dollars and sixty-six cents (\$566.66) shown by said report to have been paid to him in cash by the said purchaser on the ~~day~~ day of sale, to the parties entitled thereto, taking proper receipts for his disbursements, and report the same to the next term of the court.

And the said A. G. Hyatt, purchaser of the said land, by his counsel, having suggested to the court that he desires to pay the two deferred purchase money notes executed by him to the said commissiiner at this term of the court, and obtain a deed for the said land, it is further adjudged ordered, and decreed that the said commissioner be and he is hereby authorized to receive and collect the said notes before the same shall be come due.

And thereupon the said L. T. Hyatt, special commissioner, filed his ~~showing~~ report in the cause showing the collection by him of the two purchase money notes or bonds for the sum of ~~five~~ five hundred and sixty-six dollars and sixty-seven cents each (\$566.67), with interest thereon from the date of the said ~~decree~~ sale to the date of this decree, from the said A. G. Hyatt, purchaser. And thereupon, the cause, coming on to be further heard upon the ~~said~~ papers fromerly read, and the said last<sup>t</sup> mentioned report, <sup>was argued by counsel. On consideration whereof</sup> to which there are no exceptions, it is further adjudged, ordered and decreed that the said report be and the same is



hereby confirmed and approved by the court; that the said L. T. Hyatt, special commissioner as aforesaid, disburse the said sum of eleven hundred and thirty-eight dollars and sixty-three cents (\$1138.63) shown by the said last mentioned report to be in his hands, to the parties entitled thereto, taking proper receipts therefor, and report his action to the next term of this court; and, it appearing from the said last mentioned report that the said A. G. Hyatt has now fully paid the purchase price for the land purchased by him and is therefore entitled to a deed for the same, that L. T. Hyatt, who is hereby appointed a special commissioner for the purpose, do make <sup>and deliver</sup> ~~and execute~~ to the said A. G. Hyatt a deed, conveying to him, with special warranty, the said G. W. Zion tract of land, and report his action to the court forthwith.

And thereupon the said L. T. Hyatt, special commissioner, filed his report, showing the execution of a deed, with special warranty, to the said A. G. Hyatt, ~~xxxxxx~~ conveying to him the said land purchased by him under the proceedings of this cause, to which report and deed there are no exceptions. And thereupon this cause came on again to be further heard upon the papers formerly read herein and the said last mentioned report and deed, and was argued by counsel. Upon consideration whereof it is adjudged, ordered and decreed that the said report and deed be and they are each hereby confirmed and approved; and that the said A. G. Hyatt pay to the said commissioner the sum of five dollars (\$5.00) for his services in making the said deed.

And the ~~case is continued~~ said purchaser may have a writ of possession for the said land upon application to the clerk of this court for the same; and the cause is continued.



Maggie Zieu

r { Lu Chy.

L. P. Hyatt, Trustee et al

Decree confirming sale,  
deed &c.

Ent. Co. B. 7. P. 333 + 334

Enter this decree  
July 13<sup>th</sup> 1903.

H. W. Sherr



LEE CIRCUIT COURT.

Maggie Zion,

Complainant,

vs.

In Chancery,

L. T. Hyatt, Trustee, et al.

Defendants.

This cause came on this day to be heard upon the original bill, and exhibits filed therewith, the answer thereto, and exhibits filed therewith, and general replication to said answer, the cross bill and exhibits filed therewith, the answer to said cross bill and exhibits filed therewith, and general replication to said last named answer, and the depositions of witnesses, and upon the plea of usury offered by Maggie Zion, Complainant in the original bill, and defendant in Defendants' cross bill, and the objection of the defendants to the original bill and complainants in the cross bill to the filing of the said plea on the ground that the same is offered too late and is not sufficient in law, and was argued by counsel:

On consideration whereof, the Court allowed the said plea to be filed, and thereupon the Complainant in said cross bill so amended the said cross bill as to plead and rely upon the ~~statute~~ statute of limitation as a bar to the said plea of usury; and, on further consideration, it is adjudged, ordered and decreed that the deed of trust in the bill mentioned executed by complainant, Maggie Zion and her husband, George W. Zion, dated January 2nd, 1902, to L. T. Hyatt, Trustee, and of record in the Clerk's Office of Lee County, in Deed-Book No. 38, page 235, be, and the



(2)

same is hereby set aside, vacated and annuled, to the extent that the same purports to convey the portion of the real estate in question which was set aside to the Complainant, Maggie Zion, in the partition between the said Maggie Zion and George W. Zion, as evidenced by the deed of partition dated the 15<sup>th</sup> day of March, 1902, and recorded in Lee County Deed Book 38, page 508; and the court doth further adjudge, order and decree that the said partition was a fair and just one, and the same is hereby adopted by this Court as such.

And thereupon, upon motion of the defendants composing the firm of Pennington Gap Bank, the plaintiff is required to amend her bill and make Minerva Susong, M. F. Litton, <sup>R. L. Pennington, Trustee,</sup> Trustee, E. W. Pennington, and H. C. Joslyn, H. H. Pridemore and D. C. Sewell, ~~Executors~~ Administrators of the estate of A. L. Pridemore, Deceased, parties defendant to her bill, and all of said parties are made defendants accordingly at bar, by consent, and enter their appearance by counsel, and waive the service of process, and the cross-bill of the partnership known as the Pennington Gap Bank is treated as a cross-bill against the said new defendant, who likewise enter their appearance thereto by counsel, and it appearing that it is not necessary to take an order of reference to a commissioner on liens, it is adjudged, ordered and decreed, pursuant to the prayer of the cross-bill of the said Pennington Gap Bank, that the land assigned to the defendant, George W. Zion, in the partition between himself and the plaintiff, Maggie Zion, <sup>#</sup> be sold to satisfy the liens <sup>^</sup> existing thereon, which liens ~~are~~ declared to be in the following order of priorities, first, the costs of this suit and commissions of sale; second, to Minerva Susong the sum of \$500.00, with interest thereon from 21<sup>st</sup> day of June

and which is fully described in the deed from said Maggie Zion to said G. W. Zion, dated March 15<sup>th</sup> 1902, and recorded in Lee County Deed Book No. 39 p 209.



(3)

1897; third, the sum of \$1500.00, with interest from October 1st, 1902, due to the said Pennington Gap Bank; fourth, the sum of \$397., with interest from the 16<sup>th</sup> day of May, 1902, due to E. W. Pennington, subject to a credit of \$10.60 paid the 9<sup>th</sup> day of Feb., 1903; fifth, the sum of \$100.00 due to the aforesaid Administrators of A. L. Pridemore, deceased, ~~xix~~ with interest from the 1<sup>st</sup> day of Novr, 1886 and \$6.44, costs at law, *subject to a credit of \$75.<sup>00</sup> as of January 8<sup>th</sup> 1889.*

If the aforesaid sums are not paid within thirty days from the date of the decree, then L. T. Hyatt, who is hereby appointed a special commissioner for that purpose, shall proceed to sell the aforesaid real estate of George W. Zion at public outcry, to the highest bidder, upon the terms of one-third cash in hand, balance in one and two years from day of sale, purchaser to execute his notes payable to the commissioner, bearing interest from day of sale, for the deferred sums of purchase money, said notes to be secured by approved personal security, and said commissioner shall also retain the title to said land until fully paid for as further security for said deferred payments. The aforesaid terms being agreed to by the beneficiaries in the aforesaid deed of trust in evidence in this cause, by their counsel. Said sale shall be held at the front door of the Lee County Court House on a court day, and before selling, said commissioner shall advertise the time, terms and place of sale by posting written or printed notices thereof, for at least four weeks prior to the day of sale in three or more public places in Lee County, one of which shall be at the front door of the Court House, and another in the neighborhood of the land to be sold. Before selling, the said commissioner shall ~~ad~~ execute bond before the Clerk of this court conditioned as the law directs in the



(4)

penalty of \$5000.00. It is further adjudged, ordered and decreed that the plaintiff, Maggie Zion, do recover of the defendant, W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham and M. K. Graham, partners doing business under the firm name and style of the Pennington Gap Bank, her costs in the prosecution of the original bill expended, and also any additional costs incurred by her in defense of the cross-bill of the Pennington Gap Bank, all of which costs shall be recovered back by the said Pennington Gap Bank from the said George W. Zion, as well as the costs of the cross-bill of the said bank herein against the said Zion. It is further adjudged, ordered and decreed that the commissions of the said Hyatt, Sepcial Commissioner, shall be the legal commissions of 5% on the first \$300., and 2% on the residue of the proceeds of sale. And it is further adjudged, ordered and decreed that the purchaser of the said real estate herein decreed to be sold shall take title to the same free from any claim of contingent right of dower therein by the plaintiff Maggie Zion.

Special Commissioner Hyatt shall report his actions hereunder to this Court at a future term, and this cause is continued.



continued.

hereunder to this Court at a future term, and this cause is

Special Commissioner Hest shall report his actions  
Maggie Zion.

any claim of contingent right of dower therein by the plaintiff  
decreed to be sold shall take title to the same free from  
and decreed that the purchaser of the said real estate herein  
of the proceeds of sale. And it is further adjudged, ordered

Maggie Zion  
v. L. C. Zion  
L. P. Hyatt Trustee,  
et al.

Ent. Co B7P 271

Enter this decree  
March 9th 1903.

decreed that the plaintiff, Maggie Zion, do recover of the  
penalty of \$2000.00. It is further adjudged, ordered and



Lee Circuit Court.

Maggie Zion,

Plaintiff.

v.

L. T. Hyatt, Trustee, et al,

Defendants.

D E C R E E.

This day came L. T. Hyatt, Trustee, W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham and M. K. Graham, and asked leave to file their demurrer, which is in writing, specifying the grounds of said demurrer, and the plaintiff joined in said demurrer, and the same was argued by counsel; upon which it is adjudged, ordered and decreed that the said demurrer be, and it is, hereby overruled. And thereupon the aforesaid parties asked leave to file their answer to the plaintiff's bill, which leave was granted, and the said answer is accordingly filed, which is prayed to be treated as a cross-bill against the plaintiff and George W. Zion, and the plaintiff replied generally to said answer, and asked leave of the court, which is granted, to file her answer to said cross-bill, which is accordingly filed, and the said cross-complainants reply generally to said answer, *and this cause is continued.* ~~and the defendant, George W. Zion, failing to appear to plead, answer or demur, the cause is taken for~~ confessed as to him, and being argued by counsel, it appearing to the court necessary that a report on liens should be had herein: It is adjudged, ordered and decreed that this cause be referred to A. M. Goins, one of the commissioners of this court, who shall take and report the liens affecting the lands in controversy herein, and their priorities. He shall report, first, what liens affect the lands now owned solely by George W. Zion, and, second, those affecting the lands owned by the plaintiff, but in making his report



Maggi Zion,

*R. Decree*

L. T. Hyatt, Jr., et al

Entered on 4th Oct. 7,  
Page 202.

Enter This Nov. 14, 1902  
H. C. 218

Maggi Zion,

See Circuit Court.

Plaintiff.



Maggie Zion

Off.

VS & In Chancery -

George W. Zion et al Defts

On the calling of this cause, it was suggested to the court that the same was improperly on the docket, and the process not appearing to have been served, it is ordered that the cause be remanded to rules to be properly matured.



Maggie Zion  
+ { In Chain  
L.W. Zion

Decees 1.  
remanding to rules.

Entered C. W. B. 7  
P. 78.

Enter this decree  
July 1st 1902.  
+ 1000 Shaver



LEE CIRCUIT COURT.

MAGGIE ZION,

PLAINTIFF.

V.

Plaintiff's Depositions.

L. T. HYATT, TRUSTEE, ET AL.,

DEFENDANTS.

+++++

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THE DEPOSITIONS of W. T. Orr, R. C. Litton, Maggie Zion, D. D. Litton,  
J. A. Wampler and A. R. McClure, taken before me, Mayo Cabell,  
a Notary Public in and for the County of Lee in the State of Vir-  
ginia, at the office of J C. Noel, Pennington Gap, Virginia,  
on the 12th. day of February, 1903, by agreement of parties, by  
counsel, to be read in evidence on behalf of the plaintiff in  
an uncertain suit in Chancery, now pending in the Circuit Court of  
Lee County, Virginia, wherein Maggie Zion is Plaintiff and  
L. T. Hyatt, Trustee, and others, are defendants.

PRESENT:

J. C. Noel,

Attorney for Plaintiff, and

L. T. Hyatt & R. T. Irvine,

Attorneys for Defendants.

W. T. ORR, a witness of lawful age, being first duly  
sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Noel.

Q. 1 State your age, residence and occupation?

A. I am 47 years; a farmer, I suppose; live at Pennington  
Gap, Virginia.

Q. 2 Do you hold any official position in this, Lee County.  
If so, what?

A. Justice of the Peace.

Q. 3 How long have you been a justice of the peace for Lee Coun-  
ty?

A. Three years, last July, I reckon, since my office begun, n  
and held continuously since.



Q. 4 Are you acquainted with Maggie Zion, and George W. Zion, her husband?

A. Yes sir; I reckon I am. I know them.

Q. 5 Did you ever take the acknowledgment of the said George W. Zion and Maggie Zion to any instrument of writing since you were Justice of the Peace?

A. Yes sir.

Q. 6 To how many ~~x~~ instruments of writing have you taken their acknowledgments since you have been justice of the peace?

A. I don't remembertaking hers but once. His oftener.

Q. 7 At what place did you take the acknowledgment of the said Maggie Zion to an instrument of writing, and who was present at the time the same was taken?

A. Well, it was at the home of George W. Zion and wife, and if there was anyone present except me, him and his wife, and probably some of his children, I don't remember. I don't think there was.

Q. 8 Who solicited you to take the acknowledgment of the said Zion and wife to the instrument of writing you have spoken of?

A. George W. Zion himself.

Q. 9 At the time you took the acknowledgment of the said Maggie Zion to the said instrument of writing, did you read the instrument to her?

A. I did not.

Q. 10 Did you yourself know, at the time you took the acknowledgment, what the instrument of writing was?

A. No sir; nothing more than what he told.

Q. 11 At the time you took the said acknowledgments to the said instrument of writing, did either the said George W. Zion or Maggie Zion state what the instrument of writing was, and if so, what did they say about it?



A. Yes sir. I think I asked that question to George Zion, and he answered me that it was property at Big Stone Gap - or East Stone Gap - and I think he said Big Stone Gap. It was one of the two.

Q. 12 At the time the said acknowledgment was taken, state whether the said George W. Zion made any representations as to who had prepared the instrument of writing, and if so, tell who he said had prepared it?

A. He did. I asked him who got up that paper of writing, and he said Tate Irvine. I want to state right here that I was asked that question by Mr. Litton, and I got Mr. Irvine and Mr. Bullitt mixed somewhat. I know the faces, and I think I said Bullitt, but it is plain he told me Tate Irvine. I got the two men mixed. They live there together. I know Mr. Irvine as well as I know anybody, but the two living up there together got me mixed.

Q. 13 How came you to ask Mr. Zion who prepared the paper?

A. My recollection about that is that the handwrite appeared familiar - that I had seen it before. But I didn't think of its being Mr. Hyatt at all. Though I have seen a heap of his work.

Q. 14 I now hand you an instrument of writing purporting to be a deed of trust from George W. Zion and wife to L. T. Hyatt, Trustee, bearing date the 2nd. day of January, 190\_\_\_. Please examine the said instrument of writing, and see if it the one to which you took the acknowledgment of the said George W. Zion and wife?

( Witness examines instrument of writing.)

A. Well, as to what it contains, I couldn't say more than it looks like my handwrite. It looks like I put it there, and I



see the two names here, and those two persons signed that instrument of writing, I suppose, if I had to guess at it.

Q. 15 Does it resemble the instrument of writing you have been speaking of, acknowledged before you by George W. Zion and Maggie Zion?

A. I couldn't say further than as to the names. As to the writing, I think that is the paper, but I can't just remember all these things. As to the hand, I wouldn't want to say about that. I am confident that is my handwrite and that is the paper, and I never taken but the one.

Q. 16 I ask you to file said paper with your deposition, marked Exhibit 1.

A. I file same, marked as requested.

Q. 17 Do you mean that you wrote the body of the instrument, or merely signed it as Justice of the Peace?

A. I signed it. I took the acknowledgment and signed as Justice of the Peace. I don't mean that I got up the writing by any means.

Q. 18 Have you any independent recollection as to the time when you took the acknowledgment of said George W. Zion and Maggie Zion to said instrument of writing?

A. No sir, not as to any day or date. There is one thing; it was the time the meeting was going on up here at the Methodist Church. I can tell you that, because I wanted to hurry on to get to meeting.

Q. 19 Do you remember who it was held the meeting?

A. Walker and others.

Q. 20 Rev. Mr. Walker?

A. Yes sir. It was Bob Walker, pastor of the M. E. Church South. I remember that. He come with me until I crossed the



fork and went towards home. He was going to the Gap. He didn't pay me, I know that. He did pay it, but he didn't pay it that day.

Q. 21 Well, was the Rev. R. W. Walker that you speak of as holding the meeting, pastor on this circuit but the one year - last year?

A. No sir. Not that I know of.

Q. 22 That was last year?

A. Yes sir. I think that was the time. At the time of the protracted meeting here - I feel confident as to that - but as to what time that was, I don't know.

C R O S S - E X A M I N A T I O N.

By Mr. Irvine.

XQ 1 Did you see Mrs. Zion sign this writing?

A. I think I did sir.

XQ 2 Do you know whether she read over the paper or not?

A. No, sir, I don't know. If she did, I don't know. I don't think she did at the time.

XQ 3 The paper you spoke of was never in your possession; was it?

A. No sir.

XQ 4 You do not know whether or not she read it over before she signed, or after she signed it, not in your presence; do you?

A. No, sir; if she did, I don't know.

XQ 5 In whose possession was the paper while you were acting as suggested?

A. I think it was in the possession of George. I think so. I didn't see whether he took the paper out of his pocket or out



of the desk, when I went in. I won't say which, because I don't know.

XQ 6 Did Mrs. Zion request that the paper be read over to her?

A. No sir, not in my presence. I have no recollection of that.

XQ 7 As we understand it, you asked Mr. Zion the question about what property was conveyed; is that correct?

A. That is my recollection, sir.

XQ 8 Did Mrs. Zion ask any questions about it?

A. If she did, I don't remember.

XQ 9 She is an intelligent and educated woman, is she not?

A. Well, sir, I can't just say as to that. I reckon she is ordinary as far as intelligence is concerned, and as to education, I know nothing more than reasonable that such a man as Uncle Dixon Litton, her father, would have educated her.

XQ 10 She wrote her own name to the instrument, did she not?

A. Yes sir; I think she did.

XQ 11 Was Mrs. Zion present when you asked Mr. Zion what property was conveyed?

A. I think she was. I wouldn't state that positive at all, but I think she was.

RE - DIRECT - EXAMINATION

By Mr. Noel.

RQ 1 You spoke in your examination in chief of the intelligence and education of Mrs. Zion. Do you know, of your own knowledge, that she is an educated woman?

A. No sir; I do not.

RQ 2 When the acknowledgment to the said instrument of



writing was taken, what was done with that instrument?

A. Well sir; I don't know.

RQ 3 Who took possession of it?

A. Well, I think Zion did.

RQ 4 Did you and he leave his house then together?

A. Yes sir. We did. About the same time. I might have gone a little before him, or him before me. He came on to the barn and got his horse, and I don't think he went to the house even.

RQ 5 You didn't notice whether he put the paper in his pocket?

A. No sir; if I did, I don't remember now.

( IT IS AGREED that the instrument of writing filed with the deposition of W. T. Orr, marked Exhibit 1., is in the handwriting of A. G. Hyatt, Cashier of the Pennington Gap Bank. Hyatt and Irvine, and J. C. Noel.)

Further Deponent Sayeth Not

Signature Waived.

Witness claims Attendance.

\*\*\*\*\*

ALSO the deposition of R. E. LITTON, who being first duly sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N.

Noel.

By Mr. ~~XXXXXX~~.

Q. 1 State your age, residence and occupation?

A. I am 50 years old; occupation, farmer; residence, Dryden, Virginia.

Q. 2 Are you acquainted with George W. Zion, and with A. G.



Hyatt, Cashier of the Pennington Gap Bank?

A. Yes sir.

Q. 3 State whether or not you ever endorsed as surety a note to the Pennington Gap Bank for George W. Zion, in any sum of money?

A. No sir; I didn't endorse any note.

Q. 4 Did you receive any information that a note had been placed with the Pennington Gap Bank with your name on it as surety, or get information of that from anybody?

A. No sir; I did not.

Q. 5 At any time after the note had been placed there, if there was such a note placed there, did you get any information in the year 1901 that there was a note there of that character?

A. Yes, I asked Mr. Hyatt if Zion had any debt in the bank?

Q. 6 Do I understand that you had no information about it at all, that there was a note there with your name as surety, until you had asked Mr. ~~Zion~~ Hyatt whether Mr. Zion owed anything there at all or not?

A. No sir.

Q. 7 How came you to ask Mr. Hyatt, the cashier, if Mr. Zion owed the bank anything, and when did you so ask him?

A. I found out he had a similar note in the Jonesville Bank, and I was led to suppose he might have a note on the same ground up here, and asked Mr. Hyatt ~~how~~ if Zion had any note in the bank?

Q. 8 What did Mr. Hyatt then tell you?

A. He told me he did.

Q. 9 Did he show you the note?

A. Yes sir.



Q. 9 Do you remember for what amount the note was?

A. He had two notes. The two were for \$1625.00.

Q. 10 There were two notes with your name signed to them, amounting in the whole to \$1625?

A. Yes sir.

Q. 11 Had you signed either of those notes, or authorized anyone to sign them for you?

A. No sir.

Q. 12 Did you then notify Mr. Hyatt of the fact?

A. Yes sir; at the very time he told me.

Q. 13 When was that?

A. In October, 1901. It was about the 21st., 22nd. or 25th. of October; somewhere along there.

Q. 14 Do you remember whether those notes were then due or not?

A. They were past due, they told me, at that time.

Q. 15 When did you get any further information from Mr. Hyatt about the matter in any way.

A. Well, it was some little time after that - some twenty days later.

Q. 16 Well, what information did you then get from Mr. Hyatt?

A. Well, he wrote me George W. Zion was trying to get up a note to secure his debt there, and asked me if I would sign a note, along with other good men, to secure that debt. a while.

~~XXXXX~~ ( Any answer as to the words of this letter is objected to, because the letter is in writing and is the best evidence, and should be filed. R. T. Irvine. )

Q. 17 Have you that letter in possession which you say Mr. Hyatt wrote you, saying that Mr. Zion wanted to fix up a note,



and get other good men to sign it, together with yourself?

A. No sir; I don't know where it is. I have looked for that letter, but haven't found it?

Q. 18 When did you next hear from Mr. Hyatt about that matter?

A. Well, just a few days later on.

Q. 19 Did you make any suggestion to Mr. Hyatt as to how to secure his debt?

A. Yes sir. After he wrote me that Mr. Zion had failed to get this note made up, I wrote him to take a deed of trust on Zion's effects, on the mill property and the dwelling house.

Q. 20 Do you remember how long those notes had been running ~~after~~ at the time Mr. Hyatt showed them to you?

A. He told me they had been on hands about four years; is what he told me.

Q. 21 And at no time within four years had Mr. Hyatt mentioned to you in any way that there was a note in the bank with your name to it?

A. No sir.

Q. When you notified Mr. Hyatt that you had not signed the notes, or authorized anyone to sign them for you, what did he say as to that?

A. He didn't say anything, in particular.

C R O S S - E X A M I N A T I O N.

By Mr. Irvine.

XQ 1 Have you either of the two notes referred to by you which made up \$1625.?

A. No sir.

XQ 2 What became of them, if you know?



-11-

A. I don't see that I would have any right to know anything about those notes. No sir. Never had any knowledge of those notes, except when Mr. Hyatt told me they was in the bank.

XQ 3 Have you any other letters written to you by Mr. Hyatt than the one you refer to in your direct examination as having been lost?

A. Yes sir; I have one other letter.

XQ 4 Please file same as Exhibit "A" with your deposition.

A. I file same marked as requested.

R E - D I R E C T E X A M I N A T I O N .

By Mr. Noel.

RQ 1 In the letter you have filed with your deposition, marked Exhibit "A", I find this language: "Herewith find note properly cancelled." Please state if that referred to one of these George Zion notes?

A. No sir. That is my individual note. I have that note if they want it.

Further Deponent Sayeth Not.

Signature Waived.

Witness claims attendance.

\*\*\*\*\*

ALSO the deposition of Maggie Zion, who being first duly sworn, deposes and says:

D I R E C T - E X A M I N A T I O N .

By Mr. Noel.



Q. 1 Mrs. Zion, you are the plaintiff in this case, are you?

A. Yes sir.

Q. 2 Are you the wife of George W. Zion?

A. Yes sir.

Q. 3 Did Squire W. T. Orr take the acknowledgment of yourself and husband to an instrument of writing some time in the year 1902?

A. Yes sir.

Q. 4 Did you ever read that instrument of writing?

A. No sir.

Q. 5 Did anyone make any representations to you what that instrument of writing was?

A. No sir.

Q. 6 Did anyone ever give you any information about it in any way, and if so, say what it was?

A. George (Zion) told me it was a deed.

Q. 7 Your husband?

A. Yes sir.

Q. 8 What did he tell you it was a deed for?

A. He told me he had sold a lot in Big Stone Gap, and had a deed for it, and wanted me to sign it.

Q. 9 Did your husband at that time own some lots in Big Stone Gap?

A. He says he owns a lot there.

Q. 10 Did he tell you who prepared the deed?

A. He told me Tate Irvine wrote the deed.

Q. 11 Did you believe at the time that your husband was telling you the truth about it?

A. Oh, of course, I believed it. I put that much confidencei



in him. I didn't think otherwise.

Q. 12 Did you ever sign a deed of trust on your property, knowing it to be a deed of trust?

A. No sir.

Q. 13 Did you know at the time you signed that instrument of writing that Squire Orr took your acknowledgment to, that your husband was indebted to the Pennington Gap Bank in any sum?

A. No sir; I didn't know anything about it.

Q. 14 Had you known that it was a deed of trust on your property, would you have signed it?

A. No sir, I would not.

Q. 15 When did your husband first give you the information that he wanted you to sign the deed of trust, which he represented to be a deed for a lot in Big Stone Gap?

A. Not until Mr. Orr came into the house. He didn't tell me Mr. Orr was coming until after he had gotten in the house. I went out into the kitchen, and then George followed me and told me he had sold the lot in Big Stone Gap.

Q. 16 Did he offer to show you the deed?

A. No sir; Mr. Orr wanted to read it, and George said No, there was no necessity for it; that he was in a hurry. He said he had had the deed wrote and had promised Mr. Irvine to sign it and have it sent off that day. It was signed up in a hurry, and they both left.

Q. 17 Mrs. Zion, how long after you signed that instrument of writing was it until you learned that it was a deed of trust on your property?

A. It was some time in March, but I don't know what time.



Q. 18            Since that deed was signed, you and Mr. Zion have partitioned that land between you, have you not?

A.            Yes sir.

Q. 19            How did you arrange about making the partition of the land, did you and he voluntarily agree that each should have a certain part, or did you select commissioners to divide it between you?

A.            We had commissioners. My father attended to it.

Q. 20            Who were the commissioners who divided the land?

A.            Mr. Jim Wampler and Mr. A. K. McClure.

Q. 21            In having this land partitioned, did you have any purpose in hindering, delaying or defrauding the creditors of George W. Zion in any way?

A.            No sir.

Q. 22            The land that you had partitioned was the same land that was deeded to you and your husband by your father, Dixon S. Litton, was it?

A.            Yes sir.

C R O S S   -   E X A M I N A T I O N .

By Mr. Irvine.

XQ 1            Mrs. Zion, you did not read the deed of trust or instrument that you signed and acknowledged before Mr. Orr; did you?

A.            No sir.

XQ 2            You are educated, are you not, and a good hand at reading writing or printing?

A.            I have a very good education.

XQ 3            You just took your husband's statement of the matter as ~~xx~~



-15-

correct, as we understand it?

A. Yes sir.

Further Deponent Sayeh Not.

Signature Waived.

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ALSO the deposition of D. S. LITTON, who being first duly sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N .

By Mr. Noel.

Q. 1 State your age, residence and occupation?

A. I am going on 86 years old. Been a farmer all my life, and reside in Lee County, Virginia, in Hickory Flat.

Q. 2 Are you the Dixon S. Litton that conveyed, on the 28th. day of June, 1897, the lands in controversy in this suit to George W. Zion, and his wife Maggie Zion?

A. Yes sir; I am the man. I deeded one-half to George, and one-half to Maggie and her heirs.

Q. 3 Are you well acquainted with the lands in controversy?

A. Yes sir; I ought to be. My father gave me 132 acres when I was first grown, and the other 200 acres, the Mill tract, I believe I bought it about 1842 or 1843, and owned it all the time until I deeded it to them.

Q. 4 Are you acquainted with the partition of said lands between the said Maggie Zion and George W. Zion?

A. Yes sir; I saw it all done. Showed the men the line all over the whole day, or about a day.

Q. 5 How do the lands received by George W. Zion in that par-



tition compare in value with the lands received by Maggie Zion?

A. I thought, but then I never differ or dispute men's judgments - I thought they put George's lands too low and Maggie's too high. Now, the house we didn't differ over. The stable they put at \$200. They thought it ought to be \$200. I thought \$150 was enough for it - that is, between Mrs. Zion and her husband.

Q. 6 Who made the partition between George W. Zion and Maggie Zion?

A. Mr Jim Wampler and Mr. A. K. McClure.

Q. 7 Do you remember how they valued the respective lands?

A. They valued what she got at \$20 an acre, and George's at \$17, taking the mill and everything in.

Q. 8 In your judgment, are the lands that Maggie Zion received worth \$20 per acre?

A. I stated I thought it pretty high, and I think so yet. A portion of it is pretty good, but part of it is so rocky that nothing grows. Some of it is good grass land.

Q. 9 How much of the land received by Maggie Zion is of a tillable nature?

A. Well, a man could plough some of it, but not more than ten or twelve acres with any satisfaction. When I was first married I tilled some of it. And a man by the name of Hughes stayed there a while and he cultivated it, and after that it has been in grass ever since. George made some corn by scratchh-ing among the rocks.

Q. 10 Now, what do you think the lands assigned to George Zion are worth an acre?

A. Well, taking ~~every~~ mill, timber land and everything, I thought it was a good bargain at \$17.



Q. 11           How much of the lands received by George W. Zion is cleared and in cultivation?

A.           Well, I expect it is right close to 50 acres.

Q. 12           State how that lands compares with other lands over there for productiveness?

A.           Well, her part is the best land, but there is a heap of the other land that brings very good corn, oats, millet and anything, and there is some of it on the West hill-side; about 7 or 8 acres there is getting a little thin. When you go to the timber land, there is a great boundary that is good land. All sorts of wood grows on it - white-oak, hickory, poplar, black-oak, and in general, such growth as grows on such land. The bulk of it is white-oak - some black-oaks through it.

Q. 13           What do you consider the timber land that you have just been speaking of worth per acre?

A.           Well, it ought to go at \$30 an acre, the best of the land. There is \$10 or \$15 or nearly \$20 worth of timber on it.

Q. 14           How much of that boundary of land do you think is worth the \$30 an acre?

A.           Well, there must be 20 or 25 acres of it - just to guess at it. And there is a great big boundary over on the Northwest of pretty good land. It is sloping though. Not so but what it could be cultivated in one way or another, and it could be put in grass.

Q. 15           Would that sloping land that you speak of bring blue grass?

A.           Well, it would bring anything you put on it, from the loose soil and timber on it. There is a good growth of timber on it.

Q. 16           Well, how much of this Northwest land that you speak of is there?



A. Well, I would just have to guess at it. I hadn't been over it for years until these men were valuing it, and I only went over a little piece, but there is a right smart boundary of it.

Q. 17 About how many acres, do you think?

A. I expect 25 or 30 acres - 25 anyway.

Q. 18 What do you consider that Mill property worth?

A. Well, we all differ some over that. It is the best mill seat - best foundation for a dam to stand on - I know of. It don't vary more than 5 or 6 inches from one bank to the other; that is, with the level of the water. There is a good mill house there, and as good french burrs as was ever in this county, and good spindles - 6 or 7 feet long. Good cast boxing that goes in the rocks.

Q. 19 Well, what do you think it is worth?

A. The mill, the dam, and everything going with it, I called it \$1000, but these men differed with me. But I knew it better at that time than anybody else. I put it all there. The mill, when it was first built, and all fixtures, cost me about \$3000, but of course it is not worth it now, because it has gone down, and there are other mills that interfere with it.

Q. 20 What is the dwelling house that is now situated on Maggie Zion's farm worth?

A. I don't think the house was out of the way at \$1000, and I didn't differ with them over it. I told them I thought it about a fair price.

Q. 21 Do you know how the money was procured with which that house was built?

A. I think I do. It was mostly built from the mill and farm, and some money or material was borrowed from Minerva Susong,



on which there is now a deed of trust. This was for roofing, paint, &c., but most of it was built from the proceeds of the mill and farm. I was watching the thing pretty close, seeing how things was going, and if I had hung on a while longer it would have been a very good trick.

Q. 22 Well, taking into consideration the improvements on the land that Maggie Zion received, and the quantity of the land, and the quantity of the land received by George W. Zion, and the improvements on it, state which you think the more valuable, taking it as a whole?

A. Well, I stated a moment ago, I think Maggie's land was valued a little high, and George's a little low.

Q. 23 And that George got a little the best of it?

A. According to price. One was valued at \$20, and the other at \$17. Mind you, the land was put at \$20, and the buildings added on to that.

Q. 24 George's was put at \$17, and the mill on it at what price?

A. Why, \$600 or \$800. I think it was \$800.

C R O S S - E X A M I N A T I O N.

By Mr. Irvine.

XQ 1 How many acres did George Zion get?

A. 199 1/2, and Mrs. Zion got 132 acres, and the orchard 5. My father gave me that when I was first grown. That was the 132 acres.

XQ 2 How much was the orchard valued at?

A. With the Mill tract, \$17 per acre. They valued all the land North of the road at \$17 per acre, and that South of the road at \$20. The orchard was North of the road, and it was



cut out to Mrs. Zion.

XQ 3            Do you remember the total amount that each one got, according to valuations?

A.            I don't know that I do now. We did have it figured out, but I don't recollect.

XQ 4            Was the report of Messrs Wampler and McClure reduced to writing?

A.            Yes sir. They wrote it down.

XQ 5            Have you got that writing?

A.            I have got some of it, but I don't think I have got it with me. They wrote down their judgments and gave it to ~~hm~~ me to go by. But that was the way the land was valued. You can figure it up directly.

XQ 6            How ~~did~~<sup>would</sup> you estimate the orchard by itself, Mr. Litton?

A.            Well, taking it by itself, I don't think itought to be any higher than South of the road - taking it all. The orchard was tolerably thin land, and it had been cultivated right smart.

XQ 7            How many acres oforchard were there?

A.            Well, I expect there were four acres, maybe, or about that, and the balance on the East end of it was mighty rocky. Zion never attended to it at all. I suppose an acre or an acre and one-half was pretty rocky.

XQ 8            How old were the trees in that orchard

A.            Well, they were young trees. I suppose they have been out 4 or 5 years, 6 maybe. Small trees.

XQ 9            What do orchards cost per acre to purchase and set out trees?

A.            Why they generally buy the trees pretty low, about 15¢ or 20¢ apiece. Some perhaps 25¢, when you buy them and set them out.



XQ 10           How many are there to an acre?

A.           I can't answer that. I never tried it. They are generally set out 25 or 30 feet apart - 25 anyway. They ought to be 30 by rights, but most everybody sets them too thick.

XQ 11           Wasn't the best part of the timber cut off to Mrs. Zion in the 19 acres of timber land that she got?

A.           Oh, no. That was right under the cliff. You can't get it except by putting it in the river and floating it down. That was the difficulty about that. At the far end it gets smoother and there are a few trees there. You can't haul it up the bluff. It has to go in the river.

XQ 12           Had the timber on the whole tract been sold before the partition was made?

A.           Yes; the most of it was. It went to the benefit of this debt, bank, I reckon.

XQ 13           Do you know how much it brought?

A.           No sir; I don't.

XQ 14           Do you know whether it was about \$200 or not?

A.           Yes; I expect it was that, or maybe over it. Somewhere along there. I was pretty mad about it, and never inquired much into it. I had to take hold of it and stop it to save what little Maggie will get.

XQ 15           Did not all that timber come off of George's part of the land?

A.           The most of it did. They cut some trees off below the line. She has got no timber on her land. Not a rail on it. And the timber has got to come from under that bluff.

XQ 16           Did not they take practically all the merchantable timber that was on George's part that was sold and taken away?

A.           No; there is a heap of timber there yet.



XQ 17            ~~Don~~ Do you know any poplar tree on George's part now that would make lumber?

A.            I don't expect there is much. Very little.

XQ 18            Do you know of a white oak tree on it that would make staves?

A.            I didn't look particular about that. There might be some that would make staves, but I don't suppose there would be many, to speak plainly about it.

XQ 19            It would be correct, then, to say that practically all the merchantable timber has been taken off of George's part; would it not?

A.            I couldn't quite say that. There is some timber there that would be valuable for some things. The most of the stave trees, though, was taken off. That is my opinion about it.

XQ 20            In regard to the orchard, I will ask you if all of the trees except the apple trees are ~~are~~ not bearing trees; that is, the peaches and small fruits?

A.            I don't recollect. There may be some peach trees in there, but I think they are young and aint bore any. The oldest trees are just commenced bearing. They are young trees, and haven't been out more than 5 or 6 years.

XQ 21            Are there not a number of cherry trees and plum trees, and are they not bearing now?

A.            Well, sir, I can't tell you whether there is any in there or not. I haven's seen any in there. They have got some pear trees in the ~~year~~ yard that are bearing, but if there is any pear tree out there I haven't noticed it.

XQ 22            It was understood between yourself and Mr. and Mrs. Zion and the commissioners, was it not, that Mrs. Zion would have



the house and the land on the North side of the road?

A. No sir; there was nothing said about where she was to have. Not until after they were done.

XQ 23 How was that decided?

A. By consent of them two. She asked to have that side where the house was, and they agreed on it and the deed shows it. Mr. Noel wrote the deed.

XQ 24 Did you know or not, during the time the division was being made, that she would get the house and orchard?

A. No, I didn't. I didn't know what trouble we would have with him, for he was pretty mad and mulish. When they come there I told them to go upon the land and look until they was satisfied, and I went with them and showed them everything I knew how to show them, and I told them to take their time, and to put it at a fair cash value, by the acre. That is the directions I gave them, and I think that is nothing but fair.

XQ 25 As we understand you then, you wanted Mrs. Zion to have the dwelling house and orchard and the land on the North side of the road, but this fact was not communicated to the commissioners?

A. No, it was not communicated to them at all. That is, I have no recollection of it.

XQ 26 And Mr. Zion had not been consulted until after the valuation had been made; is that correct?

A. I don't think he had, sir.

XQ 27 Was Mr. Zion along when the commissioners put the value on the land?

A. No sir; he didn't go with us. He had the mule's head on. But they took the whole day, and I thought done their duty, and I reckon they thought they did, because they wrote down what



they did, and gave it to me, and after we had talked it over a while, I told George Zion I thought his wife should have the upper side of the road and the house, as she was living in it and had helped to build it and was willing to take it.

XQ 28            Do you think \$17 per acre was a fair price for the part George got?

A.            I thought so then, sir, and stated so here a while ago - taking land, timber and everything.

XQ 29            Would you be willing to give that for it now?

A.            I am not buying land now. I am living on the interest on my money. I have got too old now.

R E - D I R E C T       E X A M I N A T I O N .

By Mr. Noel.

RQ 1            You stated a while ago, in cross examination, that the timber on George's part of the land had been sold at the time this partition was made. Had the timber been taken off the land at that time?

A.            No, it hadn't. Very little of it, is my recollection now.

RQ 2            What do you consider the stave timber to have been worth that was on the land at the time this partition was made?

A.            That is a hard question to answer, because I was never out there when they was at work on it. I know I stopped them from cutting any more.

RQ 3            You stopped them from cutting any more in order to protect George's wife?

A.            Yes sir. Morrison Smyth come there with an instrument of writing which he said was from Mr. Hurst. He certainly



stated that Smyth had moved the timber off of it.

RQ 4 Had your daughter, Mrs. Zion, joined in the sale of this timber?

A. No sir. The day we harnessed him up here, he went by home and tried to get her to sign this timber contract, and she told him, No.

RQ 5 Did George W. Zion know that Mr. Wampler and Mr. McClure were going to estimate the value of that timber, relative to a partition?

A. Yes; because we agreed on those two men.

RQ 6 He agreed with you on those two men to go and value the land?

A. Yes sir. He never objected to their valuation.

Further Deponent Sayeth Not.

Signature Waived.

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ALSO the deposition of J. A. WAMPLER, who being first duly sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Noel.

Q. 1 State your age, residence and occupation?

A. I am 37 years old; live over here in Hickory Flat in this county. My occupation is farming; sometimes buy a few cattle and sell them.

Q. 2 How far do you live from the land in controversy in this suit?

A. Not quite two miles, I reckon. We generally call it about two, but I don't believe it is quite that distance.



Q. 3            Were you one of the commissioners that was agreed on by George W. Zion and Mrs. Zion to go upon their land and value it relative to a partion between them?

A.            I reckon they agreed upon me. They come after me, and I was one of them. Young Dixon came after me. He came after Mr. Jessee, but he couldn't go, and I asked George Zion when we went if it was all right for me to act in Jessee's place, and he said, Yes.

Q. 4            Well, did you go over the lands before valuing them?

A.            Mes sir. We went over the South side first, and valued it; and then we valued the house and barn, and then went to the mill next and valued it, and then went over to the other side and valued that side. Sort of tookit down as we went, so as to make an estimate.

Q. 5            State what thevaluation was that you put upon the land?

A.            We put the South side at \$20. an acre, is my recollection, and the other side at \$17.

Q. 6            Did that valuation include the buildings?

A            No; the buildings went on it extra. The land went that way; just the land.

Q. 7            The South side was valued at \$20?

A.            Yes sir.

Q. 8            What did you value the mill and its situation at?

A.            \$800, is my recollection. \$750 or \$800.

Q. 9            Did you make that valuation as closely and carefully as you would have made it had you been sent there by the court to make partition of that land?

A.            Yes sir.

Q. 10           Did you know, at the time the valuation was made, which



part of it George Zion would get, and which part of it Mrs. Zion would get?

A. No sir; didn't know at the time anything about it.

Q. 11 Do you still think the lands are worth the valuation you put on it?

A. Yes sir. I understand the timber has been cut off of George's. If it is, it isn't worth so much.

Q. 12 The timber was there when you made the valuation?

A. Some was cut and gone. Some was cut and lying on the ground. The rest was standing. I understood the Smyths had bought all the stave timber 20 inches and up, which I suppose they have moved since that time. We cut that much off what that side was worth.

Q. 13 At the time you made that valuation, state if there was not a considerable amount of very valuable timber there?

A. Yes sir. About as good a bunch of timber as I have seen in this county.

Q. 14 That was on what George Zion got?

A. Yes sir.

C R O S S - E X A M I N A T I O N .

By Mr. Irvine

XQ 1 Do you recall what separate valuation you put on the timber on Mr. Zion's part, if any?

A. Well, I think we valued the timber as worth \$15 or \$20 an acre, of what was standing on the timber land. I think that was the way. There was so much of it cleared. We had to guess at the boundary. We had to value the cleared land at so much an acre, and the timber land at so much an acre, as near as we could guess at the boundary. It wasn't surveyed.



And we made an average on what it would be, the whole thing. I just forget how many acres there was. It lay on a rolling hill, and great big flat<sup>on</sup> top, of the timber. I forget how much timber there was. We had to guess at it, and we estimated that timbered land at \$30 an acre, and \$10 for what was cleared on that side, and the cedar bluff and way up the river. We just struck a line with the good timber, which made it average \$17 an acre, when we put it all together.

XQ 2            You do not know what the timber that Mr. Smyth got brought; do you.?

A.            No sir; I can answer what I heard. I think I heard he sold it for \$1.50 a tree, but I am not certain about this. I think that was the way I heard it - for such a size tree and up. I think it was 20 inches and up.

XQ 3            State what was the value of the merchantable trees on the part George W. Zion got?

A.            It was principally white oak, black oak, and a great deal of chestnut, and a heap of hickory, and such growth as that. I didn't notice any poplar or ash. Some mighty fine white oak there. As fine as I ever saw anywhere.

XQ 4            Was not the timber land under the bluff that was afterwards allotted to Mrs. Zion about the best timbered land on the whole premises?

A            No sir; there was some fine trees on it - scattered on it. As fine as the other, but more scattered. The great bulk of the timber lay back West on Mr. Zion's land

XQ 5            What did you all value the orchard at?

A.            Well, we valued the orchard at that end of the farm, but not separate. I forget what we put it at. We didn't specify it separate.



XQ 6           What kind of an orchard was it?

A.           Well, it was an orchard of small trees. Some of them were pretty good sized- some of them as big as my leg. Some looked like they hadn't been set out more than a year. It was principally apple trees, is my recollection. There may have been a few peach trees, but not but a few.

XQ 7           Was it not an unusually good young orchard for this country?

A.           Yes; it was a nice young orchard, as to that. I was giving the size of the orchard. It was selected fruit, I suppose I reckon there was a cherry or two in the orchard. I am not quite certain about that.

XQ 8           What do you think a fair valuation to put on this orchard?

A.           I don't know how many acres there was in it. There isn't more than one-half of that field in orchard, is my recollection. What was in apple trees looked like it was very valuable land. Some rocks in it. Well, just what was in trees, I wouldn't put it at more than 3 acres, and then three acres looks like very good land. Trees looked like they had been manured, and doing thrifty. It ought to be worth \$30 or \$40 an acre, with the trees on it, taking it by itself. Maybe more. I never figured on orchards any. The land that they set on would be worth \$20 an acre, and then the trees added to it. I guess \$40 an acre would be a very fair price on the orchard.

XQ 9           How much would you consider the large cleared field on the North of the road, that was afterwards partitioned to Mr. Zion, reasonably worth?

A.           Well, we valued that old field, the timber and orchard in with it, at \$10 per acre, plum on out until it struck the timber land. And then there is about 2 acres of blue grass



down next the mill, and a strip of bottom runs on up the river of mighty fine land.

XQ 10           How many acres are there in that bottom?

A.             Only an acre or two.

XQ 11           What was that worth per acre?

A.             Taking it off to itself, \$30 or \$40 an acre.

XQ 12           How much would the two acres of blue grass by the mill be worth?

A.             Well, if there is two of it, its worth \$15 an acre, anyway. Whatever amount there is of it

XQ 13           Except what bluffs have been described to you as cut off to Mrs. Zion for timber land, Mr Zion got all the balance of the bluffs, did he not?

A.             I suppose he did. I never heard of his getting any of it.

XQ 14           Is not a large percentage of that land over there assigned to him, ~~and~~ in bluffs and rough land?

A.             Right smart of it is. I don't know how many acres. Some bluff lays just above the mill. May be something like 15 acres on that side what we would call bluffs, I don't know exactly how much. 15 or 20 acres, or maybe more.

XQ 15           I will ask you to draw a rough diagram of Mr. Zion's land and file it with your deposition as Exhibit "X", and explain the same in detail.

A.             I draw the same as requested, and file the same, marked as requested, showing the county road, orchard and small piece of cleared land East of the orchard, which is all in the orchard field. North of that is the cleared field which I have spoken of above which contains 50 acres, or perhaps less, which we valued at \$10 a acre, together with the bluffs surrounding the field. This includes the boundary around by the mill and



back to the county road, including the orchard and orchard field, the branch parallel with the mill road, and the grassy strip along the branch, which I mark with the letter small "a". The whole of this boundary we placed at \$10 per acre. North of that boundary is the tract of timbered land of 25 or 30 acres, and North of this is a tract marked "Rolling Timber Land" running down to the river, which is <sup>not</sup> ~~in~~ bluffs but is sloping land, and this whole boundary, together with the boundary of Mrs. Zion's timber, we estimated to be worth with the timber on it, ~~#4~~ \$30 per acre. When we averaged it all up, it amounted to \$17 per acre .

XQ 16           As we understand you then, the land that Mrs. Zion got afterwards in the partition was timber land that you all valued at \$10 per acre.

A.           Yes sir. I reckon so. But we wouldn't have valued that strip cut off by itself at that much, if it was where I think it was.

XQ 17           What would you have valued that at, do you think?

A.           Well, I expect we would have valued it at - well, it ought to be worth, in proportion to the other, if it lays where I think it does, at \$20 per acre.

XQ 18           m You and McClure had nothing to do with assigning the lands to either Mr. or Mrs. Zion; did you?

A.           No sir; I didn't.

XQ 19           You all merely put valuations on the different kinds of land, and made a statement of this in writing, and handed this to the parties?

A.           Yes sir. We valued the lands, buildings, &c., made a statement of it, and handed it to the parties.



R E - D I R E C T -- E X A M I N A T I O N .

By Mr. Noel.

RQ 1            In your cross-examination, you were asked to put a valuation on the orchard per acre, and your answer was that there was about three acres in orchard, and you thought it was ~~worth~~ worth \$30 to \$40 per acre. Did you mean that valuation to be for the whole boundary in the orchard, or just for the part that was set out in trees?

A.            Just what was in fruit trees.

RQ 2            The remainder of the land not in trees, what would it be worth per acre?

A            It wouldn't be worth but a little - not more than about \$10. It would be high at that.

Further Deponent Sayeth Not.

Signature Waved.

Witness claims attendance.

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The further taking of these depositions is ADJOURNED until tomorrow, February 13th., 1903, at the same place and between the same hours.

Mayo Cabell  
Notary Public.

MEET, pursuant to adjournment, this February 13th., 1903, at the same place and between the same hours.



ALSO the deposition of A. K. McClure, who being first duly sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N .

By Mr. Noel.

Q. 1 State your age, residence and occupation?

A. I was born in 1854 - that would make me 48, last July.  
Live at Penning<sup>ton</sup> Gap, Lee County, Virginia. Occupation, Farmer  
I reckon.

Q. 2 How close do you live to the lands in controversy in this suit, the home place of George W. Zion?

A. I suppose about 2 miles.

Q. 3 Are you acquainted with that farm?

A. Yes sir. Pretty well acquainted with it.

Q. 4 Are you one of the commissioners that was agreed upon by Mr. and Mrs. Zion and D. S. Litton to go upon that farm and value the lands, relative to a partition there of between the said Zion and wife?

A. Yes sir.

Q. 5 What was your estimate of the value of the lands, improvements, &c. there?

A. My best impression is that it was \$17 for the whole. It wasn't all valued alike - some more and some less. In the two divisions, my recollection is now that what was laid off to Mrs. Zion was at \$20 an acre. We didn't know at that time how many acres there was in the boundary, but it was supposed to be so much when we was there and laid off her part of it. The surveyor was there at work, but it wasn't finished.

Q. 6 There are three parts of that land as divided by the mill road and the county road; is there not?

A. Yes sir.



Q. 7 One part lying South of the main road, and the other two pieces lying North of the main road, and divided by the mill road?

A. Yes sir. You value them at respectively?

Q. 8 Now, the part lying South of the main road, you valued at how much per acre?

A. \$20 an acre.

Q. 9 And the part lying North of the road and West of the mill road, what was your valuation upon that?

A. I think that was included with the other at \$20 an acre.

Q. 10 Now, the part lying North of the main road, and East of the mill road; what did you value that at?

A. We didn't value that altogether. Part of it was in timber, and at that time very fine timber, and part of it was cleared. The part with timber, my impression is we valued at \$25, and the part with no timber at \$10 an acre, which would make the average for both at \$17 or \$17.50, somewhere along there, for both the timbered and cleared land.

Q. 11 Did you go over the respective lands, and examine them carefully, and note their value?

A. Yes sir; we went I suppose nearly all over the whole. Where we couldn't ride, we would go horseback or walk. We saw everything that was necessary and complete in making the valuation.

Q. 12 In making that valuation, did you do it as carefully and conscientiously as you would have done if you had been sent there by the court under oath?

A. Yes sir.

Q. 13 Are you still of the opinion that the lands are worth the respective valuations that you put upon them?



A. Yes sir, I am; that is, taking into consideration that part of the land had fine timber on it at the time. Yes sir.

Q. 14 As to the improvements, the dwelling house, barn and mill; what did you value them at respectively?

A. Why, it seems to me now we valued the house and improvements on the <sup>inside</sup> ~~inside~~ of the yard at \$1000. I considered it a very low estimate at that time, and do yet. I don't think the improvements could be put back - even today - for less than that. And the barn, I believe it was \$200., and crib, &c inside the barn lot. We estimated the mill property to be worth \$800. The mill-seat, house, &c.

Q. 15 Are you still of the opinion that that is a fair valuation of the mill property?

A. Yes sir. I am. I don't believe a person could start out and build such a house and do the work on that property for less money than that - even today.

Q. 16 Is not the location of that mill property a fine site for milling purposes, taking into consideration the farming community there?

A. Yes sir. No question about that, sir.

Q. 17 At the time you made said valuation, it was not made known to you commissioners what part Zion would get, or his wife would get; was it?

A. It seems to me that Mr. Litton did suggest something - say something in regard to it, that he would prefer his daughter having the site that we laid off to her.

Q. 18 That was after the estimation had been made, was it not?

A. Well, sir, I don't remember about that, whether it was after or before or while it was going on.

Q. 19 Did the fact that this was to be a partition between Mrs.



Zion and her husband, George W. Zion, influence you in the least as to the valuation you put on the property?

A. No sir. Not in the least.

Q. 20 By way of refreshing your memory as to the conversation with Mr. Litton about what he preferred his daughter should have, I will ask you if that conversation did not come up after the valuation was made, and Mr. Wampler asked Mr. Litton his judgment as to his valuation?

A. I don't believe it did. I believe Mr. Wampler asked that question before he knew what we had valued the place at. I am satisfied it was, now.

C R O S S - E X A M I N A T I O N .

By Mr. Hyatt.

XQ 1 Do you know, or have you been told since you made the valuation, how the land has been or was partitioned?

A. No sir. As to the number of acres in each part, I don't know, and never heard since. As to the number of acres appottioned to each one.

XQ 2 As I understand the partition, Mrs. Zion gets by it all the land lying on the West of the mill road and on the South of the main road; also a tract of five and a half acres, or thereabouts, including the orchard immediately on the North of the main road; also a tract of 19 1/2 acres of the woodland on the East side of the farm, adjoining Mr. Tritt's land and the river. Please state your opinion as to the value of the 5 1/2 acres, including the orchard and land immediately East of the orchard, running out to Tritt's line, which I understand is included in the small field?

A. Well, I would think there was something like 3 or 4 acres in trees, some of them - the majority of them -



just coming into bearing, I suppose, from the size of the trees. The part of it that has got the trees on it would be worth, I guess, \$40 an acre; the part of it that has got no trees on it wouldn't be worth so much - \$15 maybe. It is mighty rocky, is my recollection. Two-thirds of it covered up by rock.

XQ 3

Please give also your opinion of the value of the 19 1/2 acres, lying adjoining Tritt's land under the bluff, including the value of the timber on it at the time you saw it?

A.

It is my impression now of that part of it that the timber was not so fine on that, and was more inconvenient to get at than the other part of it. I suppose what timber was on it, if it was from under there, would be worth \$20 an acre - just the timber that was on it - but the timber is harder to get from that place than almost any other part of the timber land. \$20 an acre I would think would be a plenty for that part of it.

Further Deponent Sayeth Not.

Signature Waived.

\*\*\*\*\*

The further taking of these depositions is adjourned until Friday, February 20th., 1903, at the same place and between the same hours.

Mayo Cabell

Notary Public.

VIRGINIA: County of Lee, to-wit:

I, Mayo Cabell, a Notary Public in and for the County aforesaid in the State of Virginia, do certify that the foregoing depositions of W. T. Orr, R. E. Litton, Maggie



-38-

Zion, D. S. Litton, J. A. Wampler, and A. K. McClure, were taken and sworn to before me at the time and place, and for the purposes mentioned in the caption hereto annexed.

Given under my hand, this 14th. day of February, 1903.

My commission expires,

December 19th., 1905.

Mays Cabell

Notary Public.

\*\*\*\*\*

NOTARY FEE:

Note-taking	<u>6</u> hrs. @ 75¢,	<u>          </u>	<del>\$</del> 4.50
Transcribing	<u>7</u> hrs. @ 75¢,	<u>          </u>	6.75
Total,			<u>11.25</u>

Attendance:

W. T. Orr -	.50
R. E. Litton -	.50
J. A. Wampler	.50
	<u>\$ 1.50-</u>



Maggie Jew

v. PTH's Deposition

L. T. Hyatt, L. et al

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Received by mail in  
good condition and  
filed Feb'y 21st 1903

A. B. Munsey Clerk



The depositions of James E. Tritt, and others, taken before me, J. F. Skaggs, a justice of the peace for Lee county, Virginia, pursuant to adjournment and agreement of the parties by their attorneys, at the office of J. C. Noel, in the town of Pennington Gap, Virginia, on the 20 th day of February, 1903, to be read as evidence on behalf of the defendants, L. T. Hyatt, Trustee, and Pennington Gap Bank, in a certain suit in chancery now pending in the circuit court for Lee county, Virginia, wherein Maggie J. Zion is plaintiff, and L. T. Hyatt, Trustee and others, are defendants.

Present: L. T. Hyatt, Attorney for the said defendants,

J. C. Noel, Attorney for the ~~defendants~~ plaintiff

The witness, James E. Tritt, being duly sworn, deposes as follows:

Ques. 1. for same.--Please state your age, residence and occupation?

Ans.--I am 58 years of age, reside in Rocky Station, near Fritt P.O., and have been a farmer all my life.

Ques. 2. for same.--How near do you live to Geo. W. Zion and wife?

Ans.--A little over a mile.

Ques. 3 for same.--Does your farm adjoin theirs, or the one which they occupy?

Ans.--Yes, sir, it joins them both.

Ques. 4 for same.--Are you acquainted with the farm on which they live, and have you been told by any person the manner in which the said Zion farm has been partitioned between Mr. and Mrs. Zion, and if so by whom?

Ans.--I am acquainted with the farm, have been over it all my life, was raised right there at it. I have been told by two or three persons how it was partitioned, by Mr. Thompson, who did the surveying in the partition, and by others.

Ques. 5. for same/--Please state, in your opinion, the relative values of the two shares of land which Mr. and Mrs. Zion got, respectively, by the said partition?

Ans.--Well I had rather have her part by \$1000.00; if I owned it, I would not swap for that.

Ques. 6/for same.--In this estimate, state whether or not you included in Mr. Zion's land the timber as it stood at the



time the partition was made?

Ans.--I did, the way I understood the question was as the land was at the time the partition was made.

CrossExamination.

Q.(I)Did You Ever go over the land for the purpose of estimating the value of the same?

ANS.Since this thing came up I <sup>looked</sup> at it some.But I had not gone over it for that purpose before.

Ans further this deponent saith not.

*James E. <sup>his</sup> Fritts*  
*mark*

Also the deposition of W.E.Thompson, who being duly sworn, deposes as follows:

Ques.1 for defendants.--Please state your age, residence and occupation?

Ans.--I am 37 years old, live at Fritts, Lee county, Virginia, and am a farmer and surveyor.

Ques.2 for same.--Are you the man who was called upon to survey the lands of G.W.Zion and wife with a view of partitioning the same between them?

Ans.--I am.

Ques 3 for same.--How near do you live the said land, and state in this connection wherer you are well acquainted with the same?

Ans.--I live in about a mile of the land, and am acquainted with said land.

Ques.--State whether you ran and are acquainted with the partition lines?

Ans.--I ran the lines and know them, unless there were some changes made afterwards that I did not know about.

Ques 4 for same.--State, in your opinion, whether the said partition was an equal one; and if not, which share has the greater value in your opinion, and by how much?

Ans.--I think Mrs.Zion's share is the best share, by \$600.00. That is my best opinion about it.

Cross-examination.



Ques.(I)-In your judgment are A.K.McClure and J.A.Wampler good judges of the respective values of land in the community where the lands in controversy are situated?

Ans.)I should think they ought to be.

And further this deponent sayeth not.

W. E. Thompson

Virginia, Lee County, To-wit:

I, J. F. Skaggs, a Justice of the peace in and for the county and state  
Foregoing  
aforesaid, do certify that the depositions of James Tritt and W. E. Thompson were taken, sworn and subscribed before me at the time and place, and for the purposes therein named, and in the caption thereto attached.  
Given under my hand this the 20th day of February, 1903.

J. F. Skaggs J.P.



Maggie Ziew  
, & Hu Chy.  
L. T. Hyatt, Pr et al.

Depositions.

Received by mail in  
good condition and filed  
Feb'y 21<sup>st</sup> 1903  
A. B. Muncey Clerk

Bill of Costs  
J. P. \$1.50  
Wets 1.00  

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\$2.50



LEE CIRCUIT COURT.

MAGGIE ZION,

PLAINTIFF.

V.

Defendants' Depositions.

L. T. HYATT, TRUSTEE, ET AL.,

DEFENDANTS.

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Dryden Va.  
Nov. 29/1901

Mr. A. G. Hyatt

Pannington Loka Va.

Dear Sir

Enclosed find Note  
and my Check 1.68 Discount  
on same

As to Zions & Notes with  
you he said he had made  
arrangements & with you  
to give you a deed of trust  
on his mill property & Farm  
as I told you in my letter  
some day of that if he would  
get 2 other good men to sign  
with me I would help because  
the 2 Notes lil Jan. 1/1903 & he  
has failed to get the men I wanted  
so I will advise you to become  
your Note by deed of trust on



the mill & Dwelling House  
as he paid 1000<sup>00</sup> in the mill  
& Built the House with his  
own money & want you  
to Consider this as a favor  
keep it to your self

Respectfully  
R. L. Lillon

ag 4. 2

Exhibit "A. G. H. No. 2"

Filed with the deposition of

A. G. Hyatt, Feb. 13/03,

in suit of Maggie J. Hyatt v.

L. T. Hyatt, Jr. et al,

Mayo Cabell, Atty.



THE DEPOSITION of W. S. Hurst, A. G. Hyatt, J. M. Smith, John Amyth,  
J. P. Hughes, B. F. Thompson, C. B. Tritt & J. J. Carter, taken before me, Mayo Cabell,  
a Notary Public in and for the County of Lee in the State  
of Virginia, at the office of J. C. Noel, Pennington Gap,  
Virginia, on the 12th. day of February, 1903, by agreement  
of parties, by counsel, to be read in evidence on behalf of  
the defendants, L. T. Hyatt, Trustee, and the Pennington Gap  
Bank, in a certain suit in Chancery now pending in the Circuit  
Court for the County of Lee, in the State of Virginia, wherein  
Maggie Zion is plaintiff and L. T. Hyatt, Trustee, and others,  
are defendants.

PRESENT:

J. C. Noel,

Attorney for the Plaintiff, and

L. T. Hyatt and R. T. Irvine,

Attorneys for Defendants L. T. Hyatt,

Trustee, and the Pennington Gap Bank.

W. S. HURST, being first duly sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Irvine.

Q. 1 State your age, occupation and place of residence?

A. My age is 69, past. Residence, Pennington Gap, Lee County  
Virginia. I don't do anything scarcely. I am connected with  
the Pennington Gap Bank, and get out on my farm some.

Q. 2 Are you one of the defendants in this suit?

A. Yes sir.

Q. 3 Are you acquainted with the lands in controversy herein,  
and with the lands partitioned respectively between Mr. & Mrs  
Zion?

A. Well, I am pretty well acquainted with the land. There



is a little of it I have never noticed much. As to the partition, why only from what I have heard. I wasn't present when it was done.

Q. 4 We now read to you a partition deed, and ask you if from hearing the same read you can identify the lands conveyed by each to the other by said deed?

(Counsel Reads deed.)

A. I can, except the little piece of 19 acres, I believe you call it, in the bluff. I know that, but I don't know exactly how it lays or much about its value.

Q. 5 State whether or not you know the general character of said 19 acre piece you have referred to, and approximately its value, as compared with the other lands in controversy?

A. Well, from what I know, in a general way, it wouldn't be valued at anything like the land over on this side.

Q. 6 How long have you been acquainted with these lands in controversy?

A. Well, thirty odd years, I guess. Upwards of thirty years.

Q. 7 From your knowledge of these lands, state how you would value comparatively the lands allotted to Mrs. Zion, and those allotted to Mr. Zion in said partition deed?

A. Well, the lands allotted to her I consider of much more value than the lands allotted to him.

Q. 8 About how much more valuable, as near as you can estimate it, in your judgment?

A. Well, I would have to figure on it.

(Witness figures.)

I think, with the improvements on the two pieces of land, that the land assigned to Mrs. Zion is worth twice the amount of land assigned to George W. Zion.

Q. 9 Please give the basis for this estimate, as you figure it.



A. The land assigned to her is mostly blue grass land, which is the most valuable land we have now. Most of it is blue grass, and pretty fair blue grass. And of that assigned to him, there is very little blue grass land on it.

Q. 10 Please state about the improvements on the respective tracts?

A. On the land assigned to Mrs. Zion is a dwelling house - I suppose it cost about \$1000, and there is a barn. I don't know what it cost - \$300 or \$400 anyway. Then a young orchard is cut out of the 5 acre piece. The land wouldn't be so valuable, but I suppose it would be pretty good fruit land, and the orchard being on it, I suppose would make that valuable.

Q. 11 In what state of cultivation is the land assigned to Mrs. Zion, and also improvements as to fencing?

A. Well, I haven't noticed the fences lately, but it was pretty fair fencing around it when I noticed it. Fenced off into 3 or 4 pieces, except that back into the valley. This on this side, on the South side of the road, is pretty fair fencing. I don't know just how many pieces it is, but I think it is about that. There is very little assigned to her that has been incrops for some years, except blue grass.

Q. 12 Please answer the same question with ~~the~~ regard to the part assigned Mr. Zion; that is, about the state of cultivation and fencing?

A. As to the fencing, I don't know much. It is fairly good fencing around where I have seen. I don't know just what they have got over at the river. As to the state of cultivation, except a little cleared land over back next to the river, the balance of it has been laying there for years, ever since I have known it - over thirty years. It may have been, and I



think it was, plowed up once. Outside of that it has laid there.

Q. 13 Is the land assigned to him productive, or not?

A. No sir; except a little back next to the river, under the bluff.

Q. 14 Are there any improvements on the land assigned to Mr. Zion. If so what?

A. I think there is a little house, or cabin, over about the river bluff, is the only residence that I know of. May be there is two over there. I am not sure about that. There was a little house across the river above the mill there. I expect it is there. I am not sure. Just a little cabin anyway. Then the old mill I suppose is on part of his land.

Q. 15 What sort of a mill is it?

A. It is a water mill - run by water. It used to have a very good custom and grind very well, but it is getting old now, and there being more mills in the country, they are not grinding anything but corn now.

Q. 16 What would you rate the mill and appurtenances as worth?

A. I wouldn't know what the mill is worth. I could only give my view of it - what it would be worth to me.

Q. 17 Please give that?

A. I hardly know what to put it at. I wouldn't <sup>give</sup> ~~make~~ scarcely anything for it for my use, for what I could get out of it.

Q. 18 What is your best judgment as to what it could be sold at?

A. Well, sir, I don't believe it would bring \$200. Not that much.

Q. 19 Had you or any of your partners in the Pennington Gap Bank any knowledge of the fraud alleged to have been perpetrated upon the plaintiff in this cause, prior to the execution and delivery of the deed of trust in controversy?



A. I can answer that I had no knowledge.

Q. 20 Did any of your partners have any such knowledge, so far as you know?

( The foregoing question and any answer there to is objected to, because argumentative, hypothetical and irrelevant. J. C. Noel.)

A. No; not to my knowledge.

Q. 21 Who are the active and managing members of your partnership?

A. Well, Mr. Hyatt is cashier and does the principal part of the business. I am in there some. Sometimes he goes away on business. I used to be there a good deal, but I have been sick and unable to be <sup>there</sup> much, and Mr. Hyatt does the principal part of the business.

C R O S S - E X A M I N A T I O N .

By Mr. Noel.

XQ 1 Captaih, what do you estimate the land assigned to said Maggie Zion in said partition to be worth? per acre?

A. Well, I never knew until now exactly what land it was. There is a good deal of the land - most of it - that I would estimate to be worth \$20 an acre, assigned to Maggie. I allow it was worth that, aside from the house and barn. It is not all worth that quite, but most of it.

XQ 2 Did you ever go over the land assigned to Maggie Zion for the purpose of estimating its value per acre?

A. I don't know that I ever went over it for that purpose, but I have been over it often.

XQ 3 Is not the land that was assigned to Maggie Zion below



and on the North side of the State Road and West of the Mill Lane of the same character of soil as the land assigned to George Zion in this partition?

A. No sir; it is not the same character.

XQ 4 If there isn't please explain the difference?

A. Well, what produces blue grass, I don't know, but there are certain lands that produce blue grass. You can turn out a field and it will grow blue grass, and you call that blue grass land. That field is in blue grass now. I believe it was in cultivation several years ago. They plowed it up and put it in corn, but I don't think they ever sowed it. The entire piece won't, but the most of it produces blue grass.

XQ 5 Does not all the land from Shaver's Ford on the North side of the main public road up to the Green Hill church, except the immediate river bottoms, produce blue grass?

A. No sir. There comes in Jim Wampler; scarcely a bit of blue grass on his land on that side of the road. Next comes McClure's he has no blue grass to amount to anything. Then comes Henry Wade. His has ~~got~~ scarcely any blue grass on it. There is a little of it would bring grass. Then comes a little piece that produces beautiful blue grass, the Widow Wampler's land. Well, and on up it is pretty fair blue grass until right in front of George Zion's house. After leaving the mill, you don't find any more blue grass along there.

XQ 6 From there on up to Green Hill?

A. Oh, yes, you will find some up there, but you will find some on George's and Tritts.

XQ 7 Do you know that that land will not produce blue grass?

A. I know this. You turn out land, as I said, and blue grass



land, as I call it, will set in a few years, and that which is not adapted to it will not set at all. You can sow it, and it won't set. I have tried it. We have to sow English blue grass and clover.

XQ 8           How much blue grass land has Maggie Zion on the North side of the public road under discussion?

A.           I don't know what is in that field - the number of acres. She has the field, and then she has the orchard. I believe that is all she has, isn't it? I think that is all she has down there. I wouldn't know just how many acres, but I think most of that field brings blue grass, while, as I said, there is some back near to the bluff that don't, but just how much and how much there is in the field, I don't know.

XQ 9           Do you know that this land that was assigned to George W. Zion in the partition, and which you speak of as an old field, never has produced blue grass?

A.           I couldn't tell what it had done in time.

XQ 10          Is it not a fact that until a few years ago, when it was broken up for cultivation, it was in blue grass?

A.           I think it was sage grass, principally.

XQ 11          Is the land assigned to Maggie Zion good for any other purpose than as grazing land? Isn't it rocky and rough and cannot be cultivated?

A.           Yes, it is rocky. Well, a good deal can be cultivated, but it is worth more in blue grass than to cultivate it.

XQ 12          How much of it could be cultivated?

A.           Some of it has been cultivated. Well, it would just depend upon how much rock a man would want to get into. I have seen them cultivate mighty rocky land over there. You could cultivate the most of it, but I wouldn't think it advisable.



XQ 13            Now, did you ever go over the land assigned to George W. Zion with a view to estimating its worth?

A.            No; not with that view in my mind at the time.

XQ 14            How long has it been since you have been over the land assigned to George W. Zion?

A.            Well, I haven't walked over it for more than 10 years.; that is, over it all. Over it so that I could see it all. I have seen what can be seen from the road though.

XQ 15            A very small portion of it can be seen from the road, though, can it not, Captain?

A.            I have seen it from the main road to Clintville from the mill, and from the road up the river, often lately. That is, all but a little on the upper end.

XQ 16            Did you ever estimate the value of the timber that stands on the tract of land assigned to George W. Zion?

A.            No sir. Couldn't testify anything about it, only what I have heard about it back under the bluff there, and from what I can see from across the river.

XQ 17            How did you then arrive at your conclusion that the land assigned to Maggie Zion was worth double the value of the land assigned to George W. Zion?

A.            I arrived at that in this way. The land that went to George is principally unproductive, and don't produce blue grass or anything else much.

XQ 18            Hasn't George W. Zion on that land produced corn and hay and fodder sufficient to winter the cattle that have been grazing on the blue grass there?

A.            Well, I couldn't say he has. There is no meadow on it, and hasn't been since I knew it.



XQ 19 Have you ever seen the crops growing on that land, or seen the corn that was ~~grown~~ grown on it?

A. No sir.

XQ 20 Donyou know the amount it produces to the acre?

A. As I said at first, I am not familiar with the land over under the river bluff. I couldn't testify about that from what I know about it myself.

XQ 21 What is your valuation upon the land assigned to George W. Zion per acre?

A. Well, taking it upon the whole, I wouldn't hardly know what to put it at, but of course some of it is worth more than other parts. Some of it is pretty near worthless. I don't know how much is in that Cedar Hill. I don't suppose from the looks of it it would produce anything. It is covered by that low bunch of cedars. I don't know how much is in that hill. Well, sir, \$7 or \$8 would be as much as I would think it worth.

XQ 22 The whole thing through?

A. Yes sir.

XQ 23 Has not George W. Zion cut a lot of timber on this land assigned to him, and sold it, and your banking institution got got the benefit of the proceeds of sale?

A. He sold some timber, but I never went to look at it. We got some of the money. But that, I think, was before the division was made.

XQ 24 Did you get the money before the division was made?

A. No, I don't think we did. The staves were making before the division was made. The timber was sold, I think, before the division was made.



- XQ 25           Contracted, you mean?
- A.            Yes sir. I don't know just what time they paid the money.
- XQ 26           You state that you had no knowledge of the fraud that  
was perpetrated in this transaction prior to the execution of  
this deed of trust?
- A.            None whatever. No sir. And not for sometime afterwards.
- XQ 27           Did your banking institution extend this credit to George  
W. Zion on the faith of the bona fides of this deed of trust,  
or had you already extended the credit unto him, and  
taken this deed of trust?
- A.            Well, you know the bank held a note on George W. Zion  
before this time. In fact, he had been owing the bank ever  
since it had been in business there, I think. Some amounts.  
And he would renew, pay some, and renew, until this time.
- XQ 28           Was this debt of \$1500 existing at the time of the execu-  
tion of this deed of trust, or was that \$1500 loaned to George  
W. Zion on the faith of the bona fides of this deed of trust?
- A.            We held his note before that for something more than  
\$1500, and he paid it down to \$1500, and executed this deed of  
trust to secure the balance.
- XQ 29           Then the credit was not extended to him on the faith  
of the bona fides of this deed of trust?
- A.            It was in renewal of the note.
- XQ 30           Maggie Zion was in no way surety for that debt prior to  
the execution of this deed of trust; was she?
- A.            No sir.
- XQ 31           Your banking institution is as well secured for the payment  
of that money without that deed of trust, as it was prior to  
its execution; is it not?
- A.            Why, if the deed of trust is what we think it is, and



what we understood it to be, it is perfect security.

XQ 32           Without the deed of trust?

A.             Oh, no. We had security on the note.

XQ 33           What security did you have on the note?

A.             We had the name of R. E. Litton.

XQ 34           Is it not a fact that R. E. Litton notified you that his name upon the note was a forgery?

A.             He so stated on one occasion there. He said he had never put it there.

XQ 35           It was after Mr. Litton notified you that his signature was a forgery that you then went about to procure this deed of trust, was it not?

A.             Yes sir.

R E - D I R E C T -- E X A M I N A T I O N.

By Mr. Irvine.

RQ 1           The amount due your bank by Mr. Zion was due and payable at the time you made the renewal of the \$1500 note in controversy; was it not?

A.             Yes sir.

RQ 2           As we understand you then, you did extend the time of payment to Mr. Zion, as is evidenced by the \$1500 note; is that correct?

A.             Yes sir.

RQ 3           Did you or not make this extension on the faith of this deed of trust?

A.             Yes sir. He proposed, I believe, to execute a deed of trust and pay it down to \$1500 and secure it by a deed of trust.

RQ 4           If you would grant him the extension?



A. Yes sir.

RQ 5 Was the question as to the liability of Mr. R. E. Litton ever settled by your bank and Mr. Litton?

A. No; the question was never settled, so far as I know.

RQ 6 What did the bank do with the note which it had with Mr. R. E. Litton as surety upon?

A. Well, I don't think I was present when that matter was concluded. But I suppose he took up the note. That was the way the business was usually done.

RQ 7 Your bank did not concede that Mr. Litton's name was forged to said note; did it?

X. ( The foregoing question is objected to, because leading and suggesting the answer desired. J. C. Noel.)

A. No sir.

RQ 8 As we understand you, the only evidence you had as to the alleged forgery was Mr. Litton's claim to that effect; is that correct?

A. That is all.

RQ 9 What was your judgment, as a bank officer, as to the genuineness of Mr. Litton's signature to that note?

A. Well, we thought it was genuine, and we examined it carefully and compared it, and we thought it was genuine.

RQ 10 When did you make that examination?

A. After he denied the signature. We had no question about it up to that time.

RE - CROSS---EXAMINATION.

By Mr. Noel.

RXQ 1 Did George W. Zion himself propose to execute you a deed of trust to secure this debt, or did you not propose it, at the



instance of Mr. R. E. Litton?

A. I don't know how that was. They would often come there and talk when I was not present.

RXQ 2 Didn't Mr. R. E. Litton write your institution that Mr. Zion's house and mill would be ample security for this debt, and to take a deed of trust on that, and wasn't it then that you proposed to take this deed of trust?

A. I don't remember exactly whether I saw a letter or not, but I got it into my mind, either by seeing the letter, or Ad (Hyatt) told me. But it was on the whole of the tract of land, with everything on it; but whether I got that from the letter, or Ad told me, I can't remember. I don't know anything about Boh's letter. I was like I have been lately - not very well, and wasn't in the bank a great portion of the time. Ad can testify about these matters that I don't know about.

RXQ 3 When was the note executed that purported to be signed by R. E. Litton as surety?

A. I just can't tell now, without some record.

RXQ 4 You have a record in the bank, have you not?

A. I think so.

RXQ 5 I will ask you to get that record as to the last renewal of that note before the execution of this deed of trust, and file it with your deposition. I just want the date.

( Witness leaves, to get the information asked for, and returns.)

A. I find that we have two notes, one for \$1350, dated October 1, 1901, and due January 1, 1902; the other for \$275. dated October 14th, 1901, and due January 14, 1902/

RXQ 6 ~~How~~ How long had this indebtedness of said Zion been existing to said bank?



A. Well, he had been doing some business with us for a quite a while.

RXQ 7 Well, these two notes had been existing there for quite a while, hadn't they?

A. No; I don't think so. I don't know the size of the debts. Whether there was one or two debts before the execution of these two notes, I don't know.

RXQ 8 What rate of interest had Mr. Zion been paying on these notes, from the commencement of the indebtedness?

( This question and any answer thereto is objected to as immaterial, nothing being set up in the pleadings relative to the matter of interest, and no possible way in which this matter can be relevant at this time. L. T. Hyatt & R. T. Irvine)

A. Well, I suppose he paid 1% a month along back there, was about the way we charged.

RXQ 9 You do not know how long the debts had been existing?

A. No sir; I don't know how long this debt. I only know that he had been getting money along, and I couldn't figure what amount he owed at any particular time.

RXQ 10 Then you do not know whether the \$1350 note was for a debt contracted on the 1st day of October, 1901, or not?

A. No; I couldn't remember the particulars of it, in the absence of any records.

RXQ 11 Is it not a fact that Zion first commenced getting money there in small amounts, and that every little while he would add in more, and you would take a new note, including the last sum and the preceding amounts, until it ran up to this \$1350?

A. In the absence of any records, and anything to go by, I couldn't say how that was.



-15-

Further Deponent Sayeth Not.

Signature Waived.

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ALSO THE DEPOSITION of A. G. HYATT, who being first  
duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Irvine.

Q. 1 State your age, occupation and place of residence?

A. 35 years old; Reside at Pennington Gap, Virginia;  
Occupation, Cashier of Pennington Gap Bank.

Q. Are you one of the defendants in this suit?

A. I am

Q. 3 Please state when George W. Zion first became indebted to  
the bank; of the security he gave, and in a general way, what  
is the nature of his indebtedness to October, 1901, and the  
amount of his indebtedness <sup>at</sup> ~~to~~ that time?

A. Well, he became indebted to the bank by borrowing various  
sums of money at different times, commencing possibly as far  
back as 1893 or 1894 - I do not just remember which, and by  
borrowing at different times and failing to pay the notes as  
they matured, they were added together at different maturities,  
and the surety offered on all the loans we have made him was  
R. E. Litton. October, 1901, he owed, I think, two different  
notes, one for \$1350 and the other for \$275. Both of  
these notes were renewals from along perhaps in the summer -  
I don't remember the time. The last note was contracted for  
the purchase of a lot of cattle up here in the mountain, and



the other was the consolidation of different notes. Both of these amounts were due October 1 and October 14, respectively.

Q. 4            Were they renewed at those dates?

A.            Yes sir; they were renewed for 90 days each.

Q. 5            When did you first learn that Mr. Litton claimed not to have signed these notes?

A.            I don't remember exactly the month, but I think it was in December, 1901.

Q. 6            To refresh your memory on this point, we show you letter which has been filed in this case written by you to Mr. Litton and filed with his deposition. Please look at that ~~xxx~~ and state if it refreshes your memory as to the time?

A.            I wrote this letter to Mr. Litton, and it has some reference to the time.

Q. 7            Mr. Litton had called your attention to the matter before November 28th., had he not?

A.            Yes sir. He came along here one afternoon, and I understood from him he had been to Jonesville; and after transacting some business for himself he asked me if Mr. Zion owed the bank anything, and I told him he did. He asked who was security, and I said R. E. Litton., and showed him the notes, and he claimed at that time he had not seen the notes before. He came round behind the counter, and I went over the account with him, and started back some 3 or 4 years with him in the account, and examined his books. He seemed to be under the impression that he had borrowed and had had money and made away with it in some way, and used it in an illegitimate manner, and I went over the account with him. I exhibited to him all the records we had of the account, and that seemed to satisfy him



on the point; and he said just to let the matter stand until he had had a chance to see Mr. Zion - that he was then away, and as soon as he returned he promised to go to see him and get the matter straightened up. Afterwards, he ~~promised to go to~~ wrote me that Mr. Zion had promised to get some other parties to go on a renewal of the note with him. We waited some little while, and didn't hear anything from the matter, and I think then I wrote him this letter.

The foregoing answer, so far as it pertains to the statement of any matter contained in the letter received from R. E. Litton, is objected to, because the letter itself is the best evidence. J. C. Noel.)

Q. 8 Do you know whether you have preserved that letter, or whether you can find it or not?

A. Well, I usually tie letters up in bundles and lay them away at the end of the month, and I couldn't say for certain if it has been preserved or not.

Q. 9 We will ask you to search for it, and file it with the Notary before closing the depositions in this case, if you can find it?

A. All right, sir.

Q. 10 What steps did you take next, relative to this matter?

A. Well, I think in the meanwhile, we had another letter from Mr. Litton, in which he stated that Mr. Zion had failed to make the arrangement that he had talked of about securing with him, and advised us to take whatever steps we thought best, and suggested in the same letter, as well as I remember, that possibly Mr. Zion could secure the debt by a deed of trust on his land. About the next day, or a short while after - in a day or so - Mr. Zion came in himself and asked if we would take



a deed of trust on the land, and allow him to renew the note to October, 1902, provided he would reduce the debt down to \$1500, and pay the interest and balance down to \$1500. I agreed to take the deed of trust, as well as I remember, about the first of the year. The notes were about due at that time. <sup>I</sup> ~~He~~ promised to prepare the same, but did not do so for some 6 or 8 days, for I was busy the first of the year, and he came back at one time and I didn't have it prepared, so in a few days I took the matter home to prepare the same, and the next time he came I gave him the note for renewal, along with the deed of trust, to be executed by himself and wife. He took the deed of trust away with the note, and brought them back, and the renewal was dated on the 24th. day of January. I don't remember just the date he brought it back, but I suppose it was about that date. The note was dated the 2nd. of January.

Q. 11           The plaintiff's bill in this cause states that your bank became very anxious to obtain a deed of trust from George W. Zion, and charges that you even made threats against the said Zion of intended prosecutions against him. Please state whether or not this is correct?

A.           Well, it is not correct so far as we made any threats of prosecution against Mr. Zion. Maybe we were overly anxious about the adjustment of the matter, ~~except~~ that we wanted it understood about Mr. Litton's liability, as he had question it.

Q. 12           Did you know anything prior to the time the deed of trust was delivered to you after its execution, about the charges set up in the plaintiff's bill of fraud practiced upon Mrs. Zion. If not, when did you first learn of this matter?



A. Well, I did not know anything at all about the execution of the matter. The deed of trust was properly returned with Mrs. Zion's signature to it, and I was to accept it with her signature, and took it for genuine - also Mr. Zion's signature - and didn't question it at all, and only heard a dispute of the matter along early in the spring, perhaps two months or more after the deed of trust was executed. I don't just remember the date. It was about the time, though, that Mr. Smith had a timber contract over there, and had been stopped working on the same by Mr. Litton's orders.

Q. 13 State whether or not you granted the extension of this debt to Mr. Zion on the faith of this deed of trust?

A. We did take the deed of trust for security for the debt, and granted the extension until October, relying on the deed of trust.

Q. 14 State what you did with the two notes bearing the name of R. E. Litton, when the deed of trust was delivered to you?

A. We cancelled them, and gave them to Mr. Zion.

Q. 15 Was the liability of Mr. Litton on those ever settled in any way, further than the claim that he had not written his name on them?

A. No sir; not that I know of. I took the signature for genuine, or a fair imitation of it.

Q. 16 Did you compare the signatures on the notes with other writing admitted by Mr. Litton to be his?

A. ( This question is objected to, because leading. J. C. Noel.)

A. Yes sir.

Q. 17 What was the result of this comparison?



A. Well, at the time he claimed he had not signed the notes I compared them with his checks in the check file that he had drawn against his own account, and the signatures were so far as I could see almost identically the same. Once in a while there was a little difference, but not more than a man would make in his own handwriting, writing at different times.

Q. 18 What was said, if anything, by Mr. Litton, relative to the similarity of those signatures?

A. He didn't express himself at all. The only statement I think he made about the note was that it was the first time he had ever seen it.

Q. 19 How long have you been cashier of the Pennington Gap Bank?

A. Since it organized, in 1892.

Q. 20 State whether or not you had any previous experience as a bank officer; and if so, what?

A. I was assistant cashier and cashier of the Powell's Valley Bank of Jonesville for about a year or a year and a half. I don't know which.

Q. 21 State whether or not, by reason of this occupation, you have become accustomed to compare signatures to checks, notes and other instruments <sup>to</sup> ~~that~~ test the question of genuineness?

A. Well, I have been accustomed to do so; to discriminate between different handwritings.

Q. 22 State whether or not you would have surrendered and cancelled the two notes which bore Mr. Litton's name, unless the deed of trust had been given to you by Mr. Zion, or some other satisfactory arrangement made?

( The foregoing question is objected to, because immaterial to the issue involved in this case, because his surrendering and cancelling the notes does not release Mr. Litton as surety



upon the same if he was a bona fide endorser of said notes, and if his signature was a forgery, the bank has lost no security. J. C. Noel.)

A. We would ~~ha~~ not have delivered them.

Q. 23 State whether or not you requested and urged Mr. Zion to procure his wife to sign and acknowledge said deed of trust, and whether he acted in this matter as your agent, or whether it was for himself?

A. At the time he asked me to take the deed of trust, I agreed to prepare it, and told him I would do so, and he could take it and have his wife sign and acknowledge it. He brought me his title papers to his land to draw the deed of trust by. I prepared the deed of trust and gave it to him, with the understanding that the matter included her name in the deed of trust as a party to it, and with the understanding that she sign it; and what he did with regard to the signing was on his own account, and not mine. He took the deed of trust to have it executed himself.

Q. 24 State who are the managing officers of your bank?

A. W. S. Hurst is president, and I am cashier. I do all the work, or practically all that is done in the bank.

Q. 25 Did any of the other partners in the bank have any connection with this transaction in any way, or not?

A. No sir; they did not. With Mr. Hurst's consent, and by agreement between us two, we make the loans, and I ~~receipt~~ receive deposits and keep the books, and the other parties to the bank have no connection with it, and have nothing to do with the work - only have some money invested in it.



THE FURTHER TAKING of these depositions is ADJOURNED  
until tomorrow, February 13th., between the same hours.

Mayo Cabell

Notary Public.

MET pursuant to adjournment, this February 13th., 1903.

( By agreement, the further examination of A. G. Hyatt  
is hereby postponed until after the deposition of J. M. Smith.  
L. T. Hyatt and J. C. Noel.)

ALSO the deposition of J. M. SMITH, who being first duly  
sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N .

By Mr. Hyatt.

Q. 1 Please state your age, residence and occupation?

A. I will be 65 the first day of June. Live about two  
miles below Pennington Gap, Virginia. Used to be a farmer, and  
just quit.

Q. 2 Are you acquainted with the lands conveyed by D. S. Litton  
to George W. Zion and Maggie Zion on which said Zion and wife  
live and have lived for some years?

A. I am as well acquainted with that farm as any farm I have  
ever been over. Know it pretty well. I have been over it  
all my life, more or less.

Q. 3 Are you acquainted with the part of said farm assigned to  
said Zion and wife each by the partition made between them?

A. Well, I think I ought to be. I was concerned in the land  
at the time it was done. Now, from the house running East,  
I never saw the line to a "T" running from the house North.  
I know that well, but I only heard them talk about the line over



in the other direction, from the house running South, or rather Southwest.

Q. 4 Please give your opinion of the relative values of the part of said farm assigned to said George W. Zion and his wife each by said partition?

A. Well, I would a great deal rather have his wife's than George's. There is a mill there that I probaly couldn't value anything like what you or another man would do it. I don't know how to value that end of the property. The mill is in awful bad condition, and I might miss that ~~a~~ far as the East from the West anything like an equitable share. Taking that off I might be able to estimate it. While you might give \$1000 for it, I might not give \$100.

Q. 5 In your opinion, taking everything into consideration, how much more is the part assigned to Maggie Zion in the partition worth than the part assigned to George W. Zion in said partition?

A. Suppose I answer that this way. I believe I could give a better idea this way. I believe I would rather have her part than two of George's. As to putting a cash value on each part, I don't know that I am prepared to answer that question. I could answer what I think, but there are some things about it I wouldn't know how to value.

C R O S S - E X A M I N A T I O N .

By Mr. Noel.

XQ 1 Did you ever go over these lands for the purpose of comparing their respective values?

A. Well, I have been over the land, as I said, North there. I was concerned in that land. That divide took \$200 out of my



pocket, and I think I know where it lays, down to opposite the house. From the house down South or Southwest, I just heard the boys say where it run, and if it runs where they said it did, I gave my opinion on that ground.

XQ 2 Did you ever go over the land for the purpose of estimating its value?

A. No sir; I never did.

XQ 3 Do you know how much was assigned to George W. Zion in that partition, by the acre?

A. No sir. I don't. know how much was assigned to either by the acre.

XQ 4 You bought some time<sup>but</sup>, did you not, of George Zion on that land?

A. Yes sir. I bought all the timber he had. That is, all the white oak he had from 18 inches up.

XQ 5 You were notified not to move that timber, were you not, as Maggie Zion had not joined in that sale?

A. Yes sir. Not to move the staves.

XQ 6 And you received an order, did you not, from Captain Hurst President of the Pennington Gap Bank, giving you authority to remove that timber?

A. Let me see how that order would read. I think the order was this ~~was~~ way, that provided this money was paid into the Susong debt, that so far as they was concerned, to go ahead and work the timber.

XQ 7 Have you got that note?

A. I don't know. I might find it. I haven't it with me though. I don't know that I could find it, but I guess I could. Just provides what that order read. I couldn't just tell it by the letter, but that was the sum and substance



of it now.

XQ 8 Did you pay that money on the Susong debt?

A. No sir; I never got that order until we had paid George Zion for the timber we had cut, and more too, \$100 more, than what we had cut.

XQ 9 Did you pay George W. Zion himself for all the timber you got there, or did you pay the bank?

A. I paid George Zion for every stick we got. Well, now, I paid it to him or to his orders. I think he gave orders here.

XQ 10 Well, to whom were his orders payable? To the Pennington Gap Bank?

A. Well, I believe we did. I am not quite sure. No, we didn't give it to the bank individually, but he gave orders here. I believe we did give one order right here at the bank. I wouldn't say positively as to whether we did or not.

XQ 11 You knew at the time you contracted that timber from George Zion that it was land that had been given to Maggie Zion and her husband by Mr. Litton as advancements to Mrs. Zion; did you not?

A. I supposed it was George Zion's and his wife's. The day we bought it, we all took dinner there together at the same table, my and my son and old Mr. Nesbit down here.

XQ 12 Did you ever intimate in the presence of Mr. Litton or Mrs. Zion either your business there that day?

A. I don't know that we just called Mr. Litton out and told him our business, but the business was talked there at that house. I don't think we did just call Mr. Litton out and just tell him specially what we was going to give or going to do. But it was all talked over there in the house, and he knew



what was going on.

XQ 13

Talked over between Mr. Litton and Mrs. Zion?

A.

I don't whether Mrs. Zion was there and heard it all or not but Mr. Litton was right there by the fire. Mrs. Zion was running backwards and forwards from the kitchen, and I doubt if she heard the talk there, but I think the old man heard it. If he didn't, I don't know why. I wouldn't swear that he did hear it.

Further Depoent Sayeth Not.

Calims Attendance. Signature Waived.

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( Counsel agree to continue the examination of Mr.

A. G. Hyatt here, hereinbefore postponed. L. T. Hyatt and J C. Noel.)

THE DEPOSITION of A. G. HYATT (continued from page 21.)

D I R E C T - E X A M I N A T I O N.

By Mr. Hyatt.

Q. 26

Have you looked for and found the letters of Mr. R. E. Litton to you, spoken of by you on yesterday. If so, I will ask you now to file them?

A.

I have found the letters spoken of yesterday, and herewith file same marked "A.G. H. No.1" and "A.G.H.No.2".

Q. 27

Have you also a letter from Mr. R. E. Litton to which your letter of November 28th. 1901, was in reply?

A.

I have.

Q. 28

Has it any reference to the matter in controversy in this suit?

A.

It has not.



Q. 29                    If                    not  
                         ~~After~~ George W. Zion and wife had <sup>^</sup>executed the deed of  
trust in question to secure the debt of \$1500, please state  
what action you would have taken with regard to your notes  
against said Zion?and against said Litton?

A.                    ( This question is objected to, because immaterial to any  
issue involved in this suit, the Pennington Gap Bank having  
all the remedies against the said Zion and Litton now that  
it had prior to the execution of said deed of trust. J. C.  
Noel.)

A.                    If the deed of trust had not been executed, or some other  
satisfactory adjustment of the matter made, we would have  
proceeded to collect them, as we usually do, by process of law.

C R O S S - E X A M I N A T I O N .

By Mr. Noel.

XQ 1                    You state in your examination in chief that as you re-  
collected it, it was in December, 1901, that Mr. R. E. Litton  
first told you that he had not signed the George W. Zion  
notes. Is it not a fact that it was in October, just a short  
time before the November election of 1901, that he told you  
this?

A.                    I stated yesterday that I didn't remember the date, but  
judging from the letters I have found in the matter, I think  
perhaps it was in November instead of December.

XQ 2                    Did George W. Zion not confess to you, after Mr. Litton  
had told you he had not signed the notes, that Litton  
didn't actually sign them himself?

A.                    Zion never made any statement about whether Litton ever  
signed them, in my presence.

XQ 3                    Did you never tell him that Mr. Litton said he had never



signed the notes?

A. I think I did tell him so at the time <sup>I</sup> ~~he~~ prepared the deed of trust for Zion and his wife to sign, I believe.

XQ 4 You state also in your examination in chief that you prepared a note for \$1500 for Mrs. Zion to sign; did you not?

A. No sir; I did not. I prepared the note, but never aksed that she sign the note at all. I asked that the deed of trust be given to secure the note.

XQ 5 At least, Mrs. Zion never signed the note as either pri-  
cipal or surety?

A. No sir.

XQ 6 How long has this indebtedness of George W. Zion to the bank existed?

A. I don't remember the ~~exact~~ date he contracted the first debt with the bank.

XQ 7 Have you not a record of when you first received a note from him with R. E. Litton's name on it as surety?

(Witness examines record.)

A. The record of loans, while we might find a prior entry on the day books, goes back as far as May 22m 1897. At that time we had a note on Mr. Zion, with R. E. Litton as surety, for \$656, dated March 16, and due in 90 days after said date.

XQ 8 Well, what is the record of the next note, date and amount?

A. The hexst entry we find is on June 28, which is renewal of the previous note for \$656.

XQ 9 What rate of interest was charged on these two notes?

( The foregoing question is objected to, because no pleadings in the case put the ~~pleadings~~ rate of interest in issue; and further, no pleadings could put the rate of interest on a note at that time in issue, or any time except



for one year previous to the bringing of this suit. L. T. Hyatt.)

A. Well, I can't say that we made any charge, but he paid us 3% for 90 days extension. That was at the rate of 1% per month.

XQ 10 Please give the dates and amounts for the notes executed by George W. Zion with R. E. Litton's name as surety on up to the present - the record of each note?

A. The next entry shows as of November 13, 1897; \$600, dated Nov. 1, and due Feb. 1 following.

The next entry dated Jan. 26, 1898, on note bearing date Jan. 19, for \$50 for 60 days.

The next entry is March 23, 1898, for two notes, \$600 and \$200 each, dated Feb. 1, and Mch 18 respectively, both at 90 days.

The next entry is May 16, 1898, two notes of \$600 and \$200 dated May 2 and May 19 respectively, at 90 days and 30 days respectively.

The next entry is June 28th, \$200 for 90 days, dated June 18

The next entry is August 31, 1898, \$100 note, date Aug. 5, at 90 days.

The next entry is Oct. 21, for \$600, date Oct. 3, at 90 days.

The next entry is Jan. 5, 1899, 2 notes for \$600 & \$200, date Jan. 3 and Dec. 31 respectively, one at 8 mos and the other at 60 days.

The next entry is note of \$137, July 24, 1899, at 30 days. No entry of surety on this note.

The next entry is Oct. 28, 1899, \$500, date Oct. 24, at 30 days.



The next entry is Dec. 23, 1899, for \$300, dated Dec. 23, at 30 days.

The next entry is Jan. 24, 1900, for \$850, dated Jan. 3, at six months.

The next entry is April 26, 1900, for \$500, dated April 23, at 30 days.

The next entry is Oct. 30, 1900, for \$1000, at 60 days.

The next entry is Jan. 2, 1901, for \$1000, date Dec. 31, due June 30th.

The next entry is Jan. 15, 1901, \$200 same date, 30 days.

The next entry is Jan. 31, 1901, with J. F. Witt as surety, dated Jan. 29, due March 1, for \$101.04.

The next entry is May 7, 1901, for \$350, dated May 1st. and due July 1st.

The next entry is July 2nd, 1901, for \$1350, dated July 1 and due Oct. 1st.

The next entry is July 29, for \$275, dated July 13, and due Oct. 13th.

The next entry is Nov. 1, 1901, two notes of \$1350 and \$275 respectively, dated Oct. 1 and 14th. respectively, and due at 90 days each.

XQ 11           And all of these notes that you have enumerated, 1% interest per month was paid; was it not?

A.           I don't remember that it was. We made some loans or some extensions to him at longer times than 90 days at a smaller rate of interest. I remember some of the notes were given for 6 months.

XQ 12           And those given for a longer period than 90 days were charged less than 1% a month?

A.           I don't remember exactly the amounts that were paid, but



that is my opinion at present.

XQ 13

The notes that were given for a longer period than 90 days, were any of them at less than 10% a year?

( All questions with reference to the rate of interest are objected to as immaterial, because not in issue. L. T. Hyatt.)

A.

We made some loans during the period for 6 months at 8%, perhaps some of them were charged that rate. I don't remember though exactly about that.

Further Deponent Sayeth Not.

Signature Waived.

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ALSO THE DEPOSITION of John Smyth, who being first duly ~~sworn~~ sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Hyatt.

Q. 1

State your age, residence and occupation?

A.

I am 31 years old; deal in staves some; residence, Pennington Gap, Virginia.

Q. 2

Are you acquainted with the farm on which George W. Zion and wife have resided for some years?

A.

Partially, yes sir.

Q. 3

Have the lines of the 19 1/2 acres of woodland assigned to Mrs. Zion in the partition of said lands, and adjoining the Powell's River and Tritt's land, been pointed out to you approximately?

A.

Yes sir; I think they have. There is one line between



Tritt's land and that land that I don't know. Yes, I believe it was that line. Then I have been told about the line run between her and Mr. Zion.

Q. 4 Have you inspected any of the timber on this land with a view to estimating its value?

A. Well, yes sir; I went through there and estimated that. That is, just the white oak. I didn't pay any attention to anything else.

Q. 5 Please give your estimate of the white oak on that land, and the value of it?

A. I think we counted about 74 trees. It was somewhere in the seventies. I think it ought to be worth \$2 or \$2.25 per tree. Somewhere along there. I am not a very good judge of timber, but I suppose it would be worth that.

Q. 6 Please state whether or not you purchased and took off of the lands of George W Zion, which he got by the partition, the white oak timber?

A. Yes sir; I think we did, or a portion of it. Might be some left, but we got what we thought we had contracted for. I don't believe I can state as to the dimensions of the trees we was to take.

Q. 7 Please state in your opinion the relative value by the acre of the white oak timber on the land assigned to George W. Zion, and on the land assigned to Maggie Zion, that is the 19 1/2 acres?

A. Well, I reckon it is worth some more on the side we didn't cut - the side ~~we~~ assigned to Mrs. Zion.

Q. 8 Please give your opinion as to the value of the mill assigned to George W. Zion in said partition?



A. Well, I am not much of a mill man. I suppose the mill is run down considerably. I would think about \$500 or \$600, but I may be badlu off on it though. I am not a judge of a mill.

Q. 9 Have you been told the division lines made by the partition and are you acquainted with the lands generally that Maggie Zion got in the partition, and George W. Zion?

A. Well, I suppose so, partially, you might say. I have been told where the lines run by some parties.

Q. 10 Taking everything into consideration, how does the value of the property assigned to Mrs. Zion in the partition compare with the value of the property assigned to Mr. Zion in said partition?

A. From what I know about it, I would rather have the land assigned to Mrs. Zion.

Q. 11 By how much, in your opinion?

A. ~~One~~ I wouldn't know how to answer that question. I would think it was worth one-third more than his, anyway.

C R O S S - E X A M I N A T I O N .

By Mr. Noel.

XQ 1 Do you know how much land Mrs. Zion got in the partition?

A. No sir.

XQ 2 Do you know how much land George W. Zion got in the partition?

A. No sir.

XQ 3 Did you ever go over that land carefully for the purpose of valuing it?

A. No sir; I never did. As I told you a while ago.

XQ 4 What are the dimensions of the trees that you estimated



on Mrs. Zion's 19 1/2 acre tract of land that you spoke of a while ago in your examination in chief?

A. We tried to estimate them from 18 inches in diameter and 11 feet along up to - I would be surprised if they was some 4 feet in diameter. Some good trees, I know.

XQ 5 How did that timber run that you bought on the George W. Zion part of the land? In dimensions?

A. From I guess 18 to 36 inches.

XQ 6 How many trees did you get off of the George W. Zion land?

A. I am not positive about that. If I was at home, I could tell. It strikes me it was 88 trees. I am not certain about that, but if you want an estimation, I will put it at 88 trees.

XQ 7 Who showed you the lines between Mrs. Zion's 19 1/2 acres of timber land and George W. Zion's timber land?

A. Mr. George Zion for one. My father for another, and R. L. Ferguson, and perhaps some more. We heard some several talking at work in there. Maybe some several of the hands.

XQ 8 Do you know whether either of them told you the truth as to where said lines run?

A. I do not.

XQ 9 Is it not a fact, Mr. Smyth, that the timber on the part that Mrs. Zion got is more scattered than the timber on the land that George W. Zion got, and is it not also a fact that it is more difficult to get out?

A. Yes sir; the trees are more scattered, and the most of it is more difficult to get out.

R E - D I R E C T -- E X A M I N A T I O N.

By Mr. Hyatt.

RQ 1 In this deposition, you have had reference to the white



oak timber alone; have you not?

A. Yes sir.

Further Deponent Sayeth Not.

Signature Waived.

Witness claims attendance.

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ALSO the deposition of T. P. HUGHES, who being first duly sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Hyatt.

Q. 1  
~~State~~

State your age and occupation?

I am 57, I reckon, the 7 of this month. Always worked on the farm.

Q. 2

How near do you live to the lands of George W. and Maggie Zion?

A.

I would guess about 400 yards from the house to across the river, on the land I have been told belongs to Mr. Zion.

Q. 3

Yours lies on one side and theirs on the opposite?

A.

Mine is on the North side, and theirs, that always goes by the name of Zion's, is on the other side.

Q. 4

Have you been told of a partition between them of their lands, and told of the lands each got by the partition?

A.

Yes sir. I have been told about the parties..

Q. 5.

Are you acquainted with the lands?

A.

Yes sir. That is, I crossed about over the lands, and see it.

Q. 6

Please state in your opinion the relative value of the lands that Mr. and Mrs. Zion got by the partition, respectively?

A.

Well, I really don't know more than what other people has



told me about the line struck. I didn't see it. I passed through there, and some fellows mentioned that was where the division line was, but I only know from what they said. I would think from what they said, and from what I saw of the land that Mrs. Zion's land would be worth some more than Mr. Zion's.

CROSS - EXAMINATION .

By Mr. Noel.

XQ 1            You do not really know, then, where the line is, only from hearsay?

A.            No sir. I don't.

XQ 2            You do not know how much land Mrs. Zion got, and how much George W. Zion got?

A.            No sir.

XQ 3            You never went over the land and examined it carefully to estimate its value by the acre?

A.            No sir.

XQ 4            Your testimony is only from what you have casually observed from passing about the land?

A.            Yes sir.

Further Deponent Sayeth Not.

Signature Waived.

Witness Claims Attendance.

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ALSO the deposition of B. F. THOMPSON, who being first duly sworn, deposes as follows:

DIRECT - EXAMINATION.

By Mr. Hyatt.



Q. 1 State your age, residence and occupation?

A. I am 68 years old, and live in Rocky Station Township, Lee County, Virginia; Occupation, farmer.

Q. 2 How far do you live from the place where George W. Zion and wife reside?

A. It is just one mile from my house to theirs.

Q. 3 Are you acquainted with the farm on which they live, and which has been recently partitioned between them?

A. Yes sir, I think I am. I have been over it many a time.

Q. 4 Have you been told the manner in which said farm was partitioned, and what lands were assigned to each by the partition?

A. Yes sir; I have been told by different parties, and by my son who surveyed the land - and by others too.

Q. 5 Please state the relative values of the property which Mr. and Mrs. Zion got respectively by said partition?

A. Well, I wouldn't hardly know what to value the land at. I considered the part she got worth more - a good deal more than the part of the land cut off to him.

Q. 6 How much more, in your judgment?

A. Well, I would think about a third more. That is my judgment.

CROSS - EXAMINATION.

By Mr. Noel.

XQ 1 Did you ever go over the part of the farm that George Zion got, and estimate the value of the timber on it at the time or before this partition was made?

A. Well, I haven't been on it for some time. I have been over every foot of it, but it has been quite a while.

XQ 2 Did you ever go over it and compare the lands, and make an



estimation of the values of the differnt parts of the land, having in view the value of the land?

A. Well, I don't know that I had it in view at the time I was on it - anything about it. I have been over it time and again, and was only going by my judgment. In fact, you can see from the road the cleared land. I haven't been in there for a year or so. I wasn't there when the timber was cut..

XQ 3 Do you know how much land Mrs. Zion got in the partition, and how much land George W. Zion got in the partition?

A. I don't, only what was told me. And I forget what that was. I didn't pay much attention to it.

Further Deponent Sayeth Not.

Signature Waived.

Witness claims attendance.

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ALSO THE DEPOSITION of C. B. TRITT, who being first duly sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N .

By Mr. Hyatt.

Q. 1 State your age, residence and occupation?

A. I am 31 years old, I reckon. I am a farmer, and live over in Rocky Station - Fritz is my P. O., Lee County, Va.

Q. 2 How near do you live to George W. Zion?

A. I live within half a mile of him, I guess, on the adjoining farm.

Q. 3 Are you acquainted with the lands occupied by Mr. Zion and his wife?

A. I reckon I know something about it. I lived there long enough.



Q. 4           Donyou know, or have you been informed of the manner in which said land was partitioned between Mr. Zion and his wife?

A.           Yes sir; I know the way they told me it was divided. I may be mistaken in it.

Q. 5           Did you assist in surveying the land?

A.           Yes sir. I helped two days - not quite two days. A day and a half, though, and better.

Q. 6           As chain carrier?

A.           Yes sir.

Q. 7           Please give your opinion as to the relative values of the portions of said land which Mr. and Mrs. Zion got by the partition, respectively.

A.           Well, I would rather have Mrs. Zion's.

Q. 8           By how much, do you think?

A.           Well, I would rather have it by \$500, anyway.

C R O S S - E X A M I N A T I O N.

By Mr. Noel.

XQ 1           Did you ever go over the land, Charles, for the purpose of estimating the respective values of this land?

A.           I know I never with that intention, but I have been over there many times since the divide, and thought it was a one-sided business, and liked Mrs. Zion's best.

XQ 2           Do you know anything about the amount of land received by Mrs. Zion or by George W. Zion in the partition?

A.           No, I don't know. I may have heard it, but forgot.

XQ 3           Did you ever look over the land that was received by George in the partition before the timber was removed, or anything about the value of the timber?

A.           Yes, I have been over it many a time before it was ever cut, but I didn't know then what it was worth, and don't know



much now.

XQ 4           m   You never estimated its worth before that timber was removed?

A.               No sir.

Further Deponent Sayeth Not.

Signature Waived.

Witness claims attendance.

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ALSO THE DEPOSITION of J. J. CARTER, who being first deuly sworn, deposes as follows:

D I R E C T - E X A M I N A T I O N.

By Mr. Hyatt.

Q. 1           Please state your age, residence and occupation?

A.               I am 47 years old . I am a farmer by trade, and live in Lee County, Virginia, about 2 1/2 miles from this place.

Q. 2           How far do you live from the place where George Zion and wife reside?

A.               About a mile; maybe a little over a mile to where he lives, but one mile to his farm.

Q. 3           Are you acquainted withthe farm on which Mr. and Mrs. Zion have lived for a number of years?

A.               Yes sir. I am acquainted with a portion of it. I was never over part of the land. But the cleared land I am well acquainted with - the ridge land on the ridge side. But the timbered land in the bend of the river, I was never through there but once or twice.

Q. 4           Have you been told the manner in which the same has recently been partitioned between Mr. & Mrs. Zion?

A.               Yes sir.



Q . 5            Please state in your opinion whether said partition was an equal one?

A.                No sir; I wouldn't consider it so.

Q. 6             Which share would you consider the greater in value?

A.                Well, the part that Mrs. Zion got.

Q. 7             By how much?

A.                Well, I would consider it worth something like as much again - double what the other is, if I have been told correctly how the lines run.

Q. 8             How were you told that the division lines ran?

A.                I was told that she got the lands West of the mill road, and South of the main road, and the orchard on the North side of the main road, and I have been differently told about the timber land. I was first told she got 30 acres in the bend of the river, and since then, that she only got 19 or 20.

C R O S S - E X A M I N A Y I O N .

By Mr. Noel.

XQ 1.            You have not gone over the lands carefully, comparing their respective worth, have you, but just merely make your estimation from casual observation, do you not?

A.                Yes sir; that is all.

XQ 2            Do I understand from that answer that is just from casual observation?

A.                Yes; it is just from what I knew of the land.

XQ 3            As you say, then, you don't know anything about the worth of the timber on the land that Zion got that was there when this partition was made?

A.                No sir.

Further Deponent Sayeth Not.  
Signature Waived.

~~Witness~~



The further taking of these depositions is hereby adjourned until Friday, February 20th., 1903, at the same place and between the same hours.

Mayo Cabell

Notary Public.

VIRGINIA: County of Lee, to-wit:

I, Mayo Cabell, a Notary Public in and for the County aforesaid in the State of Virginia, do certify that the foregoing depositions of W. S. Hurst, A. G. Hyatt, J. M. Smyth, John Smyth, T. P. Hughes, B. F. Thompson, C. B. Tritt, and J. J. Carter were taken and sworn to before me at the time and place and for the purposes mentioned in the caption hereto annexed.

Given under my hand, this February 17th., 1903.

My Commission expires,

December 19th., 1905.

Mayo Cabell

Notary Public.

Notary Fee,

Note taking, 6 hrs. @ 75¢, 4.50

Transcribing, 9 hrs. @ 75¢, 6.75

Total. 11.25

11.25

Attendance,

J. M. Smith, .50

John Smyth, .50

T. P. Hughes, .50

B. F. Thompson, .50

C. B. Tritt, \$.50

Total \$2.50

2.50

13.75-



L. J. Hyatt Trustee  
adog Depoo

Maggie Zion

Received by mail  
in good condition  
and filed Feb'y 21st  
1903.

AB Munsey Clerk



The depositions of *John M. Smyth, Jr. J. E. Hobbs, Larkin Herndon*  
*J. B. Wolfe, John Smyth and D. S. Miller*, taken before me, J.F. Skaggs, a Justice of the Peace for the county of Lee, pursuant to agreement of the parties by counsel, at the office of J.C. Noel in the town of Pennington Gap, on the 26th day of February, 1903, to be read in evidence in behalf of the plaintiff in a certain suit depending in the Circuit Court of Lee County, wherein Maggie Zion is Plaintiff and L.T. Hyatt, Trustee and others are defendants.

Present--J.C. Noel counsel for plaintiff,

L.T. Hyatt, counsel for defendants.

John Smyth a witness of Lawful age, being duly sworn, deposeth and says as follows:

Ques. (1)--State your age residence and occupation?

Ans.--I am 51 years of age; reside in Pennington Gap, Lee county, ~~W~~ Virginia; and Have been a farmer.

Ques. 2. Are you acquainted with the lands of Maggie Zion and George Zion, the lands on which they live?

Ans.--I have been over it, am some better acquainted with Maggie's part than George's.

Ques.--Have you been over the lands recently, and been shown the respective parts assigned to Maggie Zion and George Zion with a view to ascertaining their relative values?

Ans.)) I have.

Ques.--When were you over the lands?

Ans.-- Last Monday.

Ques.--Who was in company with you in going over those lands?

Ans.--George Zion, Mr/Larkin Herndon, J.B. Wolfe, J.E. Hobbs, and J.C. Noel.

Ques.--What was your judgment as to the value of said lands per acre?

Ans.--I put the Geo. Zion land at \$15.00 per acre; and the Maggie Zion land at \$20.00 per acre.

Ques.)) What, in your judgment is the value of that Mill property?

Ans.--I believed the mill to be worth \$800.00



#2.

Ques.--Give your opinion as to the value of the improvements on Maggie Zion's part of the land?

Ans.--I belived them to b worth \$1000.00

Cross-examination.

Ques.--How much land is in Geo.Zion's tract, in yo r opinion?

Ans.--They gave it in at 204 $\frac{1}{2}$  acres. It looked like there wou**B** be that much of it.

Ques.--How much land is there in Maggie Zion's share, in your opinion?

Ans.--I belive 134 or 138, and a 19 acre woodland.

Ques.--Did you observe the orchard east of the house and on the north side of the main road?

Ans.--Yes sir.

Please give your opinion as to the value of that orchard?

Ans.--\$150.00, I guess.

At whose request did you go over said land?

Ans.--Mr.Filmore Litton's.

Ques.--What relation is he to Maggie Zion?

Ans.--Said to be her brother.

Ques.--How far do your live from said land?

Ans.--Four miles, I guess.

Ques.--How many days per week does said Mill run?

Ans.--Two they claim.

Ques.--What dies it grind?

Ans.--I don't know?

Ques.--Is it not your informtion that said mill grinds only corn?

~~AMXX~~--This question is objected to because it asks for hearsay/

Ans.--Yes sir.

Ques.--In estimating the value of said Mill, did you consul with Mr.Wilson L<sup>u</sup>ttton, the miller, as to the amount of custom said ml gets?

Ans.--No sir.



Have you not been told that the entire tolls received by said mill for some months amounts to only 7 cents per day?

Ans.--No sir.

On what do you base your estimate that said Mill is worth \$80000

Ans.--It struck me that \$200.00 would repair it and make it worth \$1000.00.

Ques.--How large a section and how thickly settled a community has said mill from which to draw custom?

Ans.--A great big country in the corn business.

Ques.--How far is it from said Mill to Sheburn's mill?

Ans.--Something like four miles.

Ques.--How far to Wilson's mill at Long Hollow

Ans.--I guess four miles.

Ques.--How far to Wolfe & Wygal's mill?

Ans.--About three miles.

Ques.--How far to Pennington Gay Steam Mill?

Ans.)) Three miles, I guess.

Ques.--Please state whether or not the four miles above mentioned do not surround said Zion mill on the North South East and West, and if the two last named in addition to grinding corn, do not also grind wheat by the Roller process?

Ans.--Yes, I have not been to the Wolfe & Wygal mill, but I have been told they have put in Rollers.

Ques.)) Supposing all the people in the section of country names should go to the nearest mill, about how many people would fall customers of the Zion mill?

Objected to because hypothetical,

Ans.--I would not know how many.

Ques.--Do you think the House in which the Zion's live could be built just as it is for \$1000.00?

Ans.--I don't expect it could now the way everything is.

Re-examination.

Q.(I) Is not the Zion Mill best situated to accommodate the people of the Hickory Flats country than any of the mills mentioned by



your in your cross,examination?

Ans. It is in my judgment.

Q.(2)--Did the fact that Filmore Litton requested you to look at the lands in controversy,influence your deposition in the least,in this case?

Ans.--No.

Re-Cross-Examination?

Ques.--Would it not be nearer for the people living in Hickory Flats over near the Station creek road to go to Shelburn's mill?

Ans.--I would not think it would, most of them anyway?

Ques.--Would it not be nearer for the people living in the lower end of Hickory Flats to go to Willson's mill?

Ans.--Yes sir, from Wampler's on below. But the they would have to cross the river.

And further this deponent sayeth not.

*John M. Smyth Jr.*

J.E.Hobbs an other witness of lawful age being duly sworn deposes and says:

Q.--(1)-State your age,residence and occupation?

Ans.I am 67 years old, live near Dryden, Va and am a Farmer.

Q.(2)-Are you acquainted with the farm on which George Zion and wife live?

Ans.-I am tolerbly well acquainted with it.

Q.(3) Have <sup>you</sup> recently been over said farm with a view of ascertaining the value of said lands, and were you shown the parts of said farm assigned to Goerge Zion and wife in the partition of the same between them?

Ans.-Yes, I was over a good portion of the farm on last Monday, and was shown what is said to be the division lines between them.

Q.(4)--In your judgment how do said lands compare in respectively in value?

Ans.I dont know as to the number of acres assigned to each one except as Mr.D.S.Litton told me, there was assigned as he says, to George about two hundred acres, and to Mrs.Zion about 158 acres. I estimated the ~~va~~ value of the lands received by Geo.Zion at from \$17.00 to \$17.50 per



acre, and that the lands of Mrs. Zion at about \$20.00 per acre.

This estimate as to the George Zion part included the white oak timber that had been removed from said lands, as Mr. Litton told me the timber had not been removed at the time the partition was made.

Q.(5)--Did this estimate of yours include the value of the Mill on George Zions land and the dwelling house and barn on Mrs. Maggie Zions land? and if not, what value respectively do you put on said improvements?

Ans. I did <sup>not</sup> put any estimate on the Mill for I am no judge of mill property, but I estimated the house and barn to be worth \$1200.00.

Q.(6)

Did you include in value of Mrs. Zions land at \$20.00 per acre, the 19½ acre tract of timber land, or did you put another valuation on ~~the~~ that?

Ans I put another valuation on that, which was about \$8.00 per acre.

#### Cross-Examination.

Ques.--Did your valuation of the land under the cliff include the timber on it?

Ans.--Yes, sir.

Ques.--Did you go over that land and look at the timber with a view of estimating its value?

Ans.--Yes, sir, along the cliff, and have been <sup>under</sup> in the cliff many <sup>at</sup> times

Ques.--About how many white oak trees would you say is on that 19½ acres, and what is their value per tree on the average?

Ans.--I never counted the trees. I don't know their value/ <sup>There</sup> is a few pretty good trees and others that are sorry.

Ques.--What is that 19½ acres worth not counting the white oak?

Ans.--Well, sir I would not consider it worth but very little.

It is very steep and rugged.

Ques.--Would it be worth as much as \$5.00 per acre not counting white oak trees?

Ans.--I don't consider it worth nigh that. I don't know what use a man could put it to.

Ques.--Did you take notice of a young orchard on the north side of the main road; and if so, what do you consider the value of the

<sup>same?</sup>  
Ans.--



Ans.--I valued <sup>it</sup> about on an average with the land above the road

Ques.--What do you consider the value per acre of the old cleared field on Geo/Zion's share?

Ans.--~~I suppose~~. A part of it has good blue grass on it and a part of it is very poor/ I did not value that separately and do not know how many acres of the good and poor land there is respectively.

Ques.--Would you be willing to give \$17.00 per acre for the 199½ acres assigned to Geo/Zion.

Ans.--If I wanted to buy it, I would, with the timber on it.

Ques.--What did you estimate to be the value of the timber cut from Geo.Zions land?

Ans.--I did not make any estimate at all, only from the stumps and the appearance of the amount that had been taken off. I have been through there a number of times and know it was a fine boundary of timber.

Ques.--At whose request did you go over this land and estimate its value?

Ans.--Mr.D.S.Litton's. He sent for me, and I was going down by there, didn't know what he wanted with me, until he told me he wanted to value the land.

Ans further witness saith not.

L. E. Hobbs

Larkin Herndon, another witness being duly sworn, deposes as follows:

Ques.1.--State your age, residence and occupation?

Ans.--Age, 71 years, or will be soon; residence, Dryden, Va.; occupation, retired farmer.

Q.(2)-Are you acquainted with the home farm of Goerge Zion and wife?

Ans.-Yes ,I have a fair knowledge of it.

Q.(3)--Have you recently been shown the respective boundarys of said farm as assigned to said Zion and wife in their partition of same?

Ans.Yes,sir.



Q/(4)--Have been over said lands with a view of forming a judgment as to their respective values?

Ans. Yes, sir.

Q.(5)--what in your judgment is the respective value of said lands?

Ans. The land said to belong to Maggie, I estimate to be worth twenty dollars per acre, except the 19½ acre tract, which I estimate at \$6.00 per acre. The part assigned to George Zion, in my judgment, is worth \$12.50 per acre as it is now without the timber.

Q(6)-- Does this estimate of yours include the improvements on said lands? If not what in your judgment is the comparative values of said improvements?

Ans. It does not. The Maggie Zion improvements I place at \$1200.00, and the Mill and other buildings on the George Zion part I estimate to be worth \$1000.00.

Q.(7)--Does not the lands assigned to said George Zion show that there has been taken recently, a large amount of very fine white oak timber?

Ans. Yes, sir.

Cross-examination.

Ques.--In estimating the 19½ acre piece of land under the cliff do you include the timber now standing on same?

Ans.--Yes sir.

Did you count the white oak trees on said 19½ acres?

Ans.-- No sir.

Ques.--Supposing there are 75 white oak trees on said 19½ acres, with on the average at least \$2.00, said white oak trees alone would make the land worth more than \$6.00 per acre would it not?

~~XXXXX~~ Objected to because argumentative.

Ans.--There is not that amount of white oak timber on it. The way I looked at it, there is very little white oak timber of value on it.

Ques.--How many days in the week does the mill run?

Ans.--I have not been acquainted with the mill for a few years, but used to be.

Ques.--In estimating the value of the mill, did you consult Mr. Wilson Litton as to the amount of custom the mill now gets.



Ans.-- I did not.

Ques.--Mr. Wilson Litton is the miller who attends the mill?

Ans.--I suppose he is.

Ques.--Aside from the mill, the other improvements on Geo. Zion's share are not very valuable are they?

Ans.--Well, there are a couple of dwelling houses, they have no extensive value.

Ques.--They are log houses are they not, and one of them very old and dilapidated?

Ans.--The one that is near the mill is an old house, I don't know how dilapidated it is. The other is comparatively new, and is a log cabin.

Ques.--What is the value of an old field on Geo. Zion's share just north of the orchard?

Ans.--I just estimated it all together, that is his side, at \$12.50 per acre.

Ques.--You went over the old field, did you not?

Ans.--Yes sir. A part of the old field is pretty good, and a part is very poor.

Ques.--Is there not a good deal of bluff land on Geo. Zion's share that is not worth much, along above the mill?

Ans.--There is a body of cedars there, grew up very thick, that is not much but rocks and cedars, but I suppose it would set in blue grass if it was cleared, that is, where there is any soil.

Ques.--Are the cedars there merchantable, or just small brushy cedars?

Ans.--They are hardly <sup>merchantable</sup> ~~valuable~~ now; they will be valuable in the future.

Ques.--Are they large enough for posts?

Ans.--Some of them are for ordinary posts.

Ques.--You mean fence posts, not telegraph posts?

Ans.--Yes, fencing posts.

Ques.--At whose request did you go and look over said land?



ans.--Mr.D.S.Litton's.

Ques.--How far do you live from the land?

Ans.--Four or five miles, I don't know exactly.

Re-Examination.

Q.(I)-Mr.Hyatt asked you in your cross examination, if there is not a great deal of bluffy land on George Zions,share,Now is there not a also agreat deal of bluffy poor land on the share of Maggie zion,~~part~~ particularly in the 45 acre field West of her house and south of the public road?

Ans.There certainly is.

And further this deponent sayeth not.

Larkin Herndon.

J.B.Wolfe,another witness of lawful age being duly sworn deposes and says:

Q.(I)--State your age,residence and occupation?

Ans.--Am 34 years old,reside in the Yokum Station, Lee County, and am a farmer, and

Q(2)--Have recently been shown the partition lines between the lands of George Zion and wife,Maggie Zion?

Ans.--I have.

Q. (3)--Have you been over said lands with a view of forming a judgment as to their respective values?If so,what is your judgment as to their respective values?

Ans.--I have, and I estimated the value of said lands follows:

The 55 acre field South of the road and East of Mrs.Zions house at ~~\$25~~ \$25.00,per acre;the 34 acres Noth of the road and West of the mill road, and the 45 acre field Suoth of the road and opposite the 34 acre field at \$15.00 per acre;the 5 acre orchard field at \$20/00 and the 19½ acre woodland on the river at about \$10.00,or averageing <sup>it</sup> and the orchard at \$15.00.per acre,making Mrs.Zions share,exclusive of house and barn,worth \$2920.00.



I estimated the George Zion part to be worth, as it is there now, at 12.50 per acre, and it said to contain about 204 acres.

As to the improvements, I consider the Mill and building on George Zions share to be about equal in value to the house and barn on Mrs. Zions land; I consider the improvements on each share to be worth about \$1000.00.

Q. (#) -- In your judgment, if the lands of George Zion as the same was shown you, were offered for sale, and the same should sell for a reasonable value, would the same, sell for enough to pay off an indebtedness of, say, \$2500.00?

Ans. I think it ought to.

Q. (5) -- Did you observe <sup>e</sup> whether there appears to have been removed from the lands assigned to George Zion, any white oak timber? If so about how much?

Ans. I noticed that there had been a great deal of timber removed. I don't know how many trees, but it looks as a considerable number had made in to staves.

Q. (6) -- Judging from what you observed, what was the character of the trees that had the appearance of having been made into staves, as regards size and quality?

Ans. I judged they were good trees, from the size of the butts and length body, as shown from the position of butts and tips, I should consider them as fine as is usually found in this country. I measured one fine one, it was 46 by 48 inches across the stump, and there appeared to a great many almost as large, but not so long.

And further witness saith not.

J. B. Wolfe.



John Smyth, an other witness being duly sworn deposes and says:

Q. You are the same John Smyth who deposed as a witness in this case, for the defendants are you not?

ANS.--Yes.

Q. In your previous deposition, you are made to say that you only got 88 stave trees on the land assigned to George Zion, did you mean to make that statement, if not how many trees did mean to say you got?

Ans.--I meant to say one hundred and eighty eight trees.

Cross-examination.

Ques.--How much were <sup>you</sup> to pay Mr/Zion per tree?

Ans.--\$1.50

Ques.--How much did you advance to him on the timber?

~~ANXXXXX~~ Objected to because immaterial in this controversy, and also because the witness has been previously examined in this cause for the defendnts, and cannot now be re-examined except as to cross-examination pertaining to the matters in which he has testified in thi deposition.

Ans.--I won't be positive, but I believe it was \$415.00 that we paid him on the timber.

Ques.--You did not get enough timber at \$1.50 per tree to repay you for the <sup>amount you paid him for</sup> timber ~~which you took from the land~~, did you; and if not please state how much you overpaid him?

Objected to for the reasons above stated.

Ans.--We did not get enough timber to pay us. It was either \$48.00 or \$66.00 that we overpaid him.

And further witness saith not.

*John Smyth*



D.S.Litton, being recalled deposes and says:

Q.(1)-You have been examined once as a witness, in this cause have you not?

Ans. Yes.

Q.(2)-In your previous examination I intended to ask you what in your judgment, is the value of the timber cut by John Smyth and J.M.Smyth on the land assigned to George Zion, but forgot to do so, you will now please state what you consider said timber worth?

Ans. I have never counted all the tress cut, and dont know that any one has told correctly how many were cut, but judging from what I know of the timber, at least fifty of said trees were worth Five Dollars each, there were fifty others were well worth three dollars each, and the balance well worth one dollar and fifty cents each. I will pay the foregoing prices for a boundary of such timber situated as they were.

And further witness saith not.

D.S. Litton

Virginia, Lee county, to-wit:

I, J.F.Skaggs, a justice of the peace for said county and state, do hereby certify that the foregoing depositions of John Smyth, J.E.Hobbs, Larkin Herndon, J.B.Wolfe, John Smyth, and D S.Litton were duly taken subscribed and sworn to before me at the time and place and for the purposes therein mentioned/

Given under my hand this the 26th day of February, 1903.

J.F. Skaggs, J.P.



Maggie Z.ieu  
- { Lu. Cluy.

L. S. Hyatt, Trustee et al.

Received by mail in  
good condition and  
filed Feb 27<sup>th</sup> 1903  
A. B. Munsey Clerk

Bill of Costs:

J. P. 6 hrs.	\$4.50
John Smyth	.50
J. E. Hobbs	.50
L. Herndon	.50
J. B. Wise	.50
John Smyth	.50
D. S. Little	.50
	<u>\$7.50</u>

Given under my hand this 28<sup>th</sup> day of February, 1903.  
and place and for the purposes therein mentioned.  
S. Little were duly taken subscribed and sworn to before me at the time  
of John Smyth, J. E. Hobbs, Larkin H. Herndon, J. B. Wise, John Smyth, and D.  
and state, do hereby certify that the foregoing is correct.

I, J. E. Herndon, a Justice of the Peace for the County of...



To the Honorable H. A. W. Skeen, Judge of the circuit court for Lee County, Virginia:

Having been appointed a special commissioner by a decree rendered on the \_\_\_\_ day of March, 1903, by the circuit court of Lee County, in the chancery cause therein depending, entitled "Maggie Zion vs. L.T. Hyatt, Trustee, et al." for the purpose of making a sale of the real estate of Geo. W. Zion, ~~XXXXXXXXXXXXXXXXXXXX~~ I now respectfully report that I have executed the said decree in the following manner:

1.--I executed before the clerk of the court the bond required by the said decree, and a copy of the said bond is herewith filed as a part of this report;

2.--I advertised the sale of the said land, as required by the decree of sale by posting notices thereof, one at the front door of the court-house of said county of Lee, another at the post-office in the town of Pennington Gap, Va., another at the store house of J. F. Witt, at Zion Mills, in said county, which is in the neighborhood of the said land, and another at the mill located on the said land; and a copy of the said advertisement is also attached to this report as a part thereof;

*between the required hours,*  
3.--On the 15th day of June, 1903, <sup>^</sup>being the first day of the June term, 1903, of the county court for said county and the day fixed in said advertisements as the day of sale, I offered the said land for sale, at the front door of the court-house of said county, by public auction. Having been requested so to do by one of the creditors, I first offered the mill with about three acres of land about it, and the residue of the tract of land separately. The highest bid offered for the mill was \$250.00, and for the residue of the farm \$500.00. I then offered the whole tract of land, when after considerable bidding A. G. Hyatt, by J. A. G. Hyatt, his agent, bid therefor, the sum of \$1700.00, and this was the highest bid~~x~~ offered, and I accordingly knocked the land off to him at that price. The sale was in the presence of a considerable number of citizens, a number of whom lived in the neighborhood of the land.

The said A. G. Hyatt paid to me in cash the sum of \$566.67, and



executed to me as commissioner his two bonds, paying in one and two years, respectfully, for the sum of \$566.67 each, with W. S. Hurst his surety therein, which I consider ample.

There is evidence in the case to show that said land is worth much more money than \$1700.00, but other evidence to show that said sum is a fair price. Personally I have no knowledge of the value of the property except a casual observation in passing along the public roads on two sides of it. Judging from that observation alone, I should say the \$1700.00 is a handsome price, but I have been informed that those parts of the land which can not be seen from the public roads are much more valuable. At any rate, being the best price obtainable after due advertisement and much crying for bidders, I recommend a confirmation of the sale.

The losers in this case will be the Pennington Gap Bank, E.W. Pennington, and the estate of A.L. Pridemore. Judge Pennington was present at the sale and bid for the land, the highest bid made by him being \$1650. I called the attention of one of the administrators of Gen. Pridemore's estate to the sale in the morning before the sale was made, and asked him if he would not bid enough for the land, <sup>to cover his debt</sup> but was informed by him that he could not do so.

Very respectfully submitted,

L. P. Hyatt

Special Commissioner.

June 18th, 1903.



Maggie Zrow  
vs { In Chancery  
L. T. Hyatt, Trustee et al

---

Report of Sale by  
L. T. Hyatt, Comr.

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Filed June 18, 1903.  
A. B. Munsey Clerk



To the Honorable H. A. W. Skeen, Judge of the circuit court for  
Lee County, Virginia:

Having been appointed a special commissioner by a decree rendered  
by the said court on the 13th day of July, 1903, in the chancery cause  
therein pending, entitled " Maggie Zion vs. L. T. Hyatt, Trustee &c.,  
et al.", and as such directed to execute and deliver to A. G. Hyatt,  
the purchaser, a deed conveying to him, with special warranty, the G.  
W. Zion tract of land purchased by him under the proceedings of this  
cause, your commissioner now respectfully reports that he has made  
executed, acknowledged, and delivered the said deed, ~~in~~ accordance  
with the said decree, and <sup>asks</sup> that the same be approved by the court;  
and that he be allowed the usual fee of \$5.00 for his services in making  
the said deed.

Respectfully submitted, July 13th, 1903.

*L. T. Hyatt*

Special Commissioner.



Maggie F. Jew

v { In Chancery,  
L. B. Hyatt, Trustee vs. et al.

---

Report of Deed.

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Filed July 13<sup>th</sup> 1903.  
A. B. Munsey  
Clerk.



To the Honorable H. A. W. Skeen, Judge of the circuit court for Lee County, Virginia:

Having been directed by a decree of the said court, rendered on the 13th day of July, 1903, in the chancery cause therein pending entitled "~~Maggie~~ Zion vs. L. T. Hyatt, Trustee &c., et al.", to collect or receive from A. G. Hyatt, the purchaser of the G. W. Zion land, the amounts of the deferred purchase money bonds, your commissioner respectfully reports that the said A. G. Hyatt has this day paid to him the sum of one thousand, one hundred and thirty-eight dollars and sixty-three cents (\$1138.63), the amount of the two deferred payments, with interest thereon from the 15th day of June, 1903, the day of sale, until this day, and <sup>he</sup> holds the same subject to the order of the court. The said purchaser has therefore paid all the purchase money for the said land and is now entitled to a deed.

All which is respectfully submitted, July 13th, 1903.

L. T. Hyatt,  
Special Commissioner.



Maggie Zion  
vs. { In Chancery  
L. F. Hyatt, Pr. & et al

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Report of full collec-  
tion of purchase money

---

Filed July 13<sup>th</sup> 1903.  
A. B. Munsey  
Clerk.



Your commissioner, who was, by a decree of said court, entered on the 13th day of July, 1903, in the chancery cause therein pending, entitled "Maggie Zion, vs. L. T. Hyatt, Trustee &c. et al.," directed to disburse the sum of five hundred and sixty six and 65/100 Dollars (\$566.65) shown by his report filed June 18th, 1903, to be in his hands, and also the sum of eleven hundred and thirty eight and 63/100 Dollars, (\$1138.63) shown by his report filed on the 13th day of July, 1903, to be in his hands, to ~~the~~ parties entitled thereto, now respectfully reports, that he has fully complied with the said decree by making disbursements of the said funds as follos;

Your commissioner paid these sums by check and also took receipts which he has on file in his office, and which will be produced and filed.

January 28th, 1904.

*L. T. Bryant*  
Special Commissioner.



SPECIAL COMMISSIONER.

Respectfully submitted, January 31st, 1904.

be produced and filed.

took receipts which he has on file in his office, and which will  
Your commissioner paid these sums by check and also

Washington Gap, Bank,	1003.29	1003.29
Washington Gap, Bank,	828.63	
Washington Gap, Bank,	806.00	
L. T. Hyatt, Comr. of sale,	43.00	
D. B. Washington, D.C.,	4.80	
W. B. Thompson,	.50	
James E. Triff,	.50	
D. S. Litton,	.50	
J. B. Wolf,	.50	
Larkin Herndon,	.50	
J. E. Hoppe,	.50	
John Smyth,	.50	
J. A. Wampler,	.50	
R. M. Litton,	.50	
W. T. Orr,	.50	
G. B. Triff,	.50	
R. F. Thompson,	.50	
T. F. Hughes,	.50	
John Smyth,	.50	
J. Morrison Smyth, witness,	.50	
Barker,	13.25	
paid to him to Mayo Gopbell & W.C.		
Y. O. Hyatt, Cashier on account of govt	11.25	
Mayo Gopbell,	6.00	
" " " " " "	15.00	
" " " " " "	15.00	
" " " " " "	3.65	
" " " " " "	13.05	
Total paid to hands,	\$105.29	

Maggie Zion  
B.  
L. T. Hyatt, Trustee re  
et al

Report by L. T. Hyatt,  
Comr. of his disburse-  
ments.

Filed Jan. 22<sup>nd</sup> 1904  
A. B. Murray Clerk

directed to disburse the sum of five hundred and sixty six and  
the, entitled "Maggie Zion, vs. L. T. Hyatt, Trustee re. et al."  
on the 13th day of July, 1903, in the chancery cause therein pend-  
Your commissioner, who was, by a decree of said court, entered  
Lee County, Virginia.

To the Hon. H. A. W. Schoen, Judge of the circuit court for



This Deed made this the 28th day of June, 1897, by and between Dixon S. Litton and Lavina H. Litton, his wife, parties of the first part and George W. Zion and Maggie Zion, parties of the second part; and all of Lee County, Va.

Witnesseth, that for and in consideration of the sum of Two <sup>h</sup> Thousand and seven hundred dollars, as an advancement to our daughter the said Maggie Zion, and with which sum she is to be charged in the settlement of our estate after our death, and in consideration of the natural love and affection the said parties of the first part do and each of them doth hereby give, grant, bargain, sell and deliver and convey unto the said parties of the second part jointly their heirs and assigns and to be equally divided between said second parties four certain tracts or parcels of land lying and being in Lee County on the South Side of Powells river the first of which tracts or parcels of land bounded as follows, to wit; Beginning at two sugar-trees on the river cliff on a line of said Litton's land & corner to a survey made by Samuel Tritt, thence with said Litton's line N.25 W. 74 poles to a white oak and beech on the top of a ridge N.5 E. 120 poles to a lynn "and four beeches on the bank of said river and up the same as it meanders to a chinquepin oak and a double elm, corner to said Tritt's survey and with a line thereof, N.84 W.40 poles to the beginning, and containing 26 acres more or less, and being the same land patented to said D.S. Litton on Oct. 1st, 1855: and the second of said teacts of land is bounded as follows; <sup>to wit</sup> Beginning at a stake on the north side of a wagon road, thence N.44 $\frac{1}{2}$  W. 25 poles to a stake in the old line of which this is a part and with said line S.33 W.46 poles to a stake by a white oak stump (line calling for white-oak and two sugartrees) S.60 E.15 poles, crossing new



wagon road and ~~thence~~ to a stake by the old wagon road in a field, N.30 E. 12 poles to a stake in the new wagon road, N.48 E.32 poles to the beginning and containing 5 acres and fifty three poles more or less and being the same land conveyed to said Samuel Tritt on Feb 19, 1859, which deed is of record in the county court clerk's office of Lee County in D.B.No.14, page 187: the third of which tracts of land being the same land conveyed to said Dixon S. Litton on March 23rd, 1843, and recorded in D.B.No.10 page 171 and bounded as follows, to-wit: Beginning on a locust and two hickories on the river cliff, thence S.42 E.39 poles to a stake by a wagon road, S.27 E.2 poles crossing the wagon road to a stake, S.42 E.87 poles to a white oak and sugartree on a line of the original survey and with same N.73 E.76 poles to an ash and two sugar-trees on the top of a rocky ridge, corner to Pepies line and with the same N.52 E.108 poles to a Hickory, sasafra and spanish oak, corner to Samuel Tritt's land, thence No.50 W. 121 poles to a rock by the main county road, S.48 W. 58 poles to a stake in a lane, N.31 W.8<sup>1</sup>/<sub>2</sub> poles to a white oak: N. 49 W.36 poles to a sugar-tree by a fence, N.65 W.26 poles to two sugartrees near the river cliff on the north side of the hill, thence along said cliff southwestwardly 76 poles to the beginning, and said to be 132 acres, be the same more or less, excepting therefrom a road heretofore conveyed to Henry <sup>cale</sup> ~~Nixon~~; and the fourth of said tracts of land said to contain two hundred acres more or less and bounded as follows, to-wit: Beginning at a beech (now gone, which beech stood near the ford that crosses to Litton's mill) and running with the old Koger line N.85 E.60 poles to a white oak and beech, S.55 E. 45 poles to a white oak and small sugartree on a line marked and called Pepper's line, and with the same N.33 E.120 poles to a beech



cucumber and hickory, thence leaving said lines S.75 W.32 poles to two beeches and a hickory on a cliff, thence W.24 poles to two sugar-trees, N.65 W.24 poles to a white-oak and sugartree on a cliff, N. 25 W.94 poles to a white-oak and beech, N. 5 E.120 poles to a lynn and four beeches on the bank of Powells river, thence down the same with the several meanderings thereof 420 poles to the beginning,

To have and to hold said tracts or parcels of land, together with all their appurtenances, improvements and mills &c. unto the said parties of the second part, their heirs and assigns forever. And the said first parties covenant with the said second parties that they will warrant generally the title ~~to the~~ said four tracts of land, <sup>and</sup> its appurtenances and improvements.

Witness the following signatures and seals. the day and year first above written.

D. S. Litton, (Seal.)

her

Lavina H. X Litton (Seal.)  
mark.

Virginia, Lee County:

I, Robert W.Orr, a Justice of the Peace in and for the county and state aforesaid, do hereby certify that Dixon S.Litton and Lavina H.Litton, whose names are signed to the writing above, bearing date on the 28th day of June, 1897, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 29th day of June, 1897.

Robert W. Orr, J.P.

Virginia, Lee County, to-wit:

In the office of the clerk of the county court of said county the 18th day of April, 1898. This deed was presented and, together with the certificate thereto annexed, admitted to record.

Teste: S. V. F. Richmond, clerk.

A copy from D.B.34, p.139 &c., Teste: B. M. Morgan, clerk.



A copy from D.R. 34, p. 133 Sec., Teste:

CLERK.

Teste: S. A. P. Richmond, Clerk.  
With the certificate hereto annexed, admitted to record.  
the 18th day of April, 1898. This deed was presented and, together  
in the office of the clerk of the county court of said county  
Virginia, Lee County, to-wit:

Robert W. Orr, J.P.

Given under my hand this the 23th day of June, 1897.  
me in my county aforesaid.

date on the 28th day of June, 1897, have acknowledged the same before  
Ains H. Litton, whose names are signed to the writing above, bearing  
and state aforesaid, do hereby certify that Dixon S. Litton and I  
I, Robert W. Orr, a Justice of the Peace in and for the county  
Virginia, Lee County:

MARK.  
Leaving H. X Litton (Seal.)  
per  
D. S. Litton, (Seal.)

first above written.

of land, its appurtenances and improvements.

*D. S. Litton wife  
To Beed  
Geo. N. Zivier wife*

*Copy*

*Clark 7 cts.*

and four peaches on the bank of Powell's river, thence down the same  
to the several meanderings thereof 430 poles to the meandering,  
to hold said tracts or parcels of land, together  
with all their appurtenances, improvements and mills &c. unto the  
said parties covenanted with the said second party as  
and the said first parties covenanted with the said second party as  
said parties of the second part, their heirs and assigns forever.  
trees, N. 65 W. 21 poles to a white-oak and peach, N. 6 E. 130 poles to a pine  
two peaches and a hickory on a cliff, thence W. 24 poles to two sugar-  
cucumber and hickory, thence leaving said lines S. 75 W. 32 poles to



This deed made this 2nd, day of January 1902 by and between George W. Zion and Maggie Zion his wife Parties of the first Part, and L.T. Hyatt Trustee Party of the second Part, all of Lee County, Virginia. Witnesseth, That whereas the said George W. Zion is indebted to Pennington Gap Bank of Pennington Gap Va. in the just and full sum of Fifteen Hundred Dollars ( \$1500.00 ) evidenced by a negotiable note of even date herewith due and Payable October 1st, 1902, and the said George W. Zion & wife, desiring to more effectually secure the Prompt Payment of the aforesaid debt to the Pennington Gap Bank, at the date of maturity as aforesaid, for and in consideration of the Premises and of one dollar in hand Paid the receipt of which is hereby acknowledged do and each of them doth hereby give grant bargain sell and convey all their right title and interest with covenants of general warranty, in and to the following described real estate lying and being in Lee County Virginia, near Zion Mills Post Office and known as the land upon which said Zion and wife now live, and which was conveyed to them by Deed from D.S. Litton and wife bearing date 28th day of June 1897, duly recorded in Lee County Court Clerks Office in Deed Book No 34 Page 139 &c and to which reference is hereby made for a more particular description thereof, said Land is estimated to be 363 acres more or less and composed of four seperately described tracts. To have and to hold the said four tracts of land, together with all the appurtenances thereto belonging as well as all improvements, and the Mill known as "Littons Mill" thereon, unto the said L.T. Hyatt, Trustee, Party of the second Part and his successors or assigns forever. In trust nevertheless, if the said George W. Zion or some one for him shall promptly pay unto the Pennington Gap Bank, or their assigns the aforesaid debt at its date of maturity, then this deed to be void. But if he shall make default in the Payment of same or any part thereof, then the aforesaid trustee shall upon the request of the executive officer of Pennington Gap Bank proceed to sell the aforesaid described land or /so much thereof as may be necessary together with the buildings and the improvements thereon, to pay the aforesaid debt and all accrued interest and costs thereon. And said sale shall be made at the front door of the courthouse of Lee County Virginia for cash in hand, after having advertised the



terms, Place & date of sale for 15 days by written or Printed notices Posted at 3 or more Public Places in the neighbourhood of the land . Out of the proceeds of said sale, he will after retaining legal commissions for himself pay unto the Pennington Gap Bank, or its assigns the full amount <sup>of</sup> the aforesaid debt and all accrued interest, then remaining unpaid and any residue he will turn over to the said George W. Zion and wife, or to whom they may direct. Witness the following signatures and seals, <sup>above</sup> the day and year first written.

Geo. W. Zion (Seal)

Maggie Zion (Seal)

Virginia, Lee County to-wit;

I, W. T. Orr a Justice of the Peace for the county and State aforesaid do hereby certify that George W. Zion and Maggie Zion his wife whose names are signed to the foregoing deed bearing date January 2<sup>n</sup> 1902 have acknowledged the same before me in my county aforesaid. Given under my hand this 15 day of January 1902.

W. T. Orr J. P. Lee Co. Va.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County the 24<sup>th</sup>, day of January 1902. This deed was Presented, and together with the certificate thereto annexed admitted to record.

Teste; B. M. Mogan Clerk.

A Copy Teste; B. M. Mogan ----- Clerk.  
( D. B. 38. Page 235 & c )



Geo. W. Zion & wife  
To & Beed  
L. P. Hyatt, Trustee

Copy,

"L"

Clerk 50 cts.







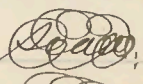
S D Litton and wife bearing date 28<sup>th</sup>  
day of June 1897. duly recorded  
in Lee County Court Clerk's office  
in Deed Book No 34 page 139 & c, and  
to which reference is hereby made  
for a more particular description  
thereof, Said land is estimated  
to be 363 acres more or less and  
composed of four separately described  
tracts, To Have and to Hold the said  
four tracts of land, together with all  
the appurtenances thereto belonging, as  
well as all improvements, and the  
Mill known as Litton's Mill, thereon,  
unto the said J I Hyatt Trustee, party  
of the second part and his successor  
or assigns forever, ~~~~~

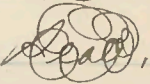
In trust - Nevertheless, if the said  
George E Zion or some one for him  
shall promptly pay unto the Pennington  
Gap Bank or their assigns the aforesaid  
debt at its date of maturity, then this  
deed to be void. But if he shall  
make default in the payment of  
same or any part thereof, then the  
aforesaid Trustee shall upon the  
request of the executive officer of  
Pennington Gap Bank proceed to sell  
the aforesaid, described land or so  
much thereof as may be necessary  
together with the buildings and the  
improvements thereon, to pay the



aforsaid debt and all accrued interest and costs thereon.

And said sale shall be made at the front door of the Courthouse of Lee County Virginia ~~off~~ Cash in hand, after having advertised the terms, place & date of sale for 15 days by written or printed notices posted at 3 or more public places in the neighborhood of the land. Out of the proceeds of said sale, he will after retaining legal commissions for himself pay unto the Pennington Gap Bank, or its assigns the full amount of the aforsaid debt and all accrued interest, then remaining unpaid and any residue he will turn over to the said George W Zion and wife, or to whom they may direct. Witness the following signatures and seals the day and year first above written

Geo. W. Zion. 

Maggie Zion. 

Virginia Lee County to wit.

I W J Orr a Justice of the Peace for the County and State aforsaid do hereby Certify that George W. Zion and Maggie Zion his wife whose names are signed to the foregoing deed bearing date January 27 1901 have acknowledged the same before me in my County aforsaid Given under my hand this 15 day of January 1902

W. J. Orr 



Virginia, Lee County to-wit:

In the Office of the Clerk of the County Court for said County  
the 24th, day of January 1902. This deed was Presented, and together with  
the certificate thereto annexed admitted to record.

Teste; *B. M. Morgan* Clerk.

*George Zion & wife  
To B. M. Morgan*

*L. G. Hyatt Trustee  
January 27 1902*

*Recorded in Deed*

*Book No. 38 p. 235*

*Indexed*

*Examined Jan 25, 1902*

*" Exhibit 1 "*

*Filed with the deposition of W. J. Orr,  
Feb. 12<sup>th</sup> 1903, in suit of Maggie Zion  
v. Pennington Gap Band & Co.*

*Mayo Cabell, Atty.*

*Clerk \$1.23-*

*Tax 1.50*

*\$2.73-*

*Paid Jan 28/1902*



This deed made this the 2 day of January 1902, by and between George W. Zion and Maggie Zion his wife, parties of the first part, and L. T. Hyatt, Trustee, party of the second part, all of Lee County Virginia.

Witnesseth; That whereas the said George W. Zion is indebted to Pennington Gap Bank of Pennington Gap Va. in the just and full sum of Fifteen hundred dollars (\$1500.00) evidenced by a negotiable note of even date ~~therewith~~ due and payable Oct. 1st 1902, and the said George W. Zion & wife, desiring to more effectually secure <sup>the prompt payment of the aforesaid debt</sup> to the Pennington Gap Bank at the date of maturity aforesaid, for and in consideration of the premises and of one dollar in hand paid, the receipt of which is hereby acknowledged, do and each of them doth hereby give, grant, bargain, sell and convey all their right title and interest with covenants of general warranty, in to the following described real estate lying and being in Lee County Virginia, near Zion Mills Postoffice and known as the land upon which said Zion and wife now live, and which was conveyed to them by deed from D. S. Litton and wife bearing date 28th day of June 1897, duly recorded in Lee County Court Clerk's Office in Deed Book No. 34 page 139 &c, and to which reference is hereby made for a more particular description thereof, said land is estimated to be 363 acres more or less and composed of four separately described tracts. To have and to hold the said four tracts of land together with all the appurtenances belonging as well as all improvements, and the mill known as the "Littons Mill" thereon, unto the said L. T. Hyatt Trustee, party of the second part and his successors or assigns forever. In trust, nevertheless, if the said George W. Zion or some one for him shall promptly pay unto the Pennington Gap Bank or their assigns the aforesaid debt, at its date of maturity, then this deed to be void. But if he shall make default in the payment of same or any part thereof then the aforesaid Trustee shall upon the request of the executive officer of Pennington Gap Bank proceed to sell the aforesaid described land or so much thereof as may be necessary together with the buildings and the improve-



ments thereon, to pay the aforesaid debt and all accrued interest and costs thereon. And ~~the~~ said sale shall be made at the front door of the Courthouse of Lee County Virginia, for cash in hand, after having advertised the terms, ~~place~~<sup>ed</sup> and date of sale for 15 days by written or printed notice posted at 3 or more public places in the neighborhood of the land. Out of the proceeds of said sale he will after retaining legal ~~com~~<sup>com</sup>mission for himself, pay unto the Pennington Gap Bank, or its assigns the full amount of the aforesaid debt and all accrued ~~int~~<sup>est</sup> then remaining unpaid and any residue, he will turn over to the said George W. Zion and wife, or to whom they may direct. Witness the following signatures and seals, the day and year first above written.

Geo. W. Zion (Seal)

Maggie Zion (Seal)

Virginia, Lee County to wit;

I, W. T. Orr a Justice of the Peace for ~~the~~<sup>the</sup> County and State aforesaid do hereby certify that George W. Zion and Maggie Zion his wife whose names are signed to the foregoing deed bearing date January 2nd 1902, have acknowledged the same before me in my County aforesaid. Given under my hand this 15 day of January 1902.

W. T. Orr J. P. Lee Co. Va.

Virginia, Lee County to-wit;

In the office of the Clerk of the County Court for said County, the 24th day of January 1902. This deed was presented, and together with the certificate thereto annexed, admitted to record.

Teste; B. M. Morgan, Clerk.

A Copy Teste; ~~B. M. Morgan~~ ---Clerk.  
(D. B. No. 38 page 235)

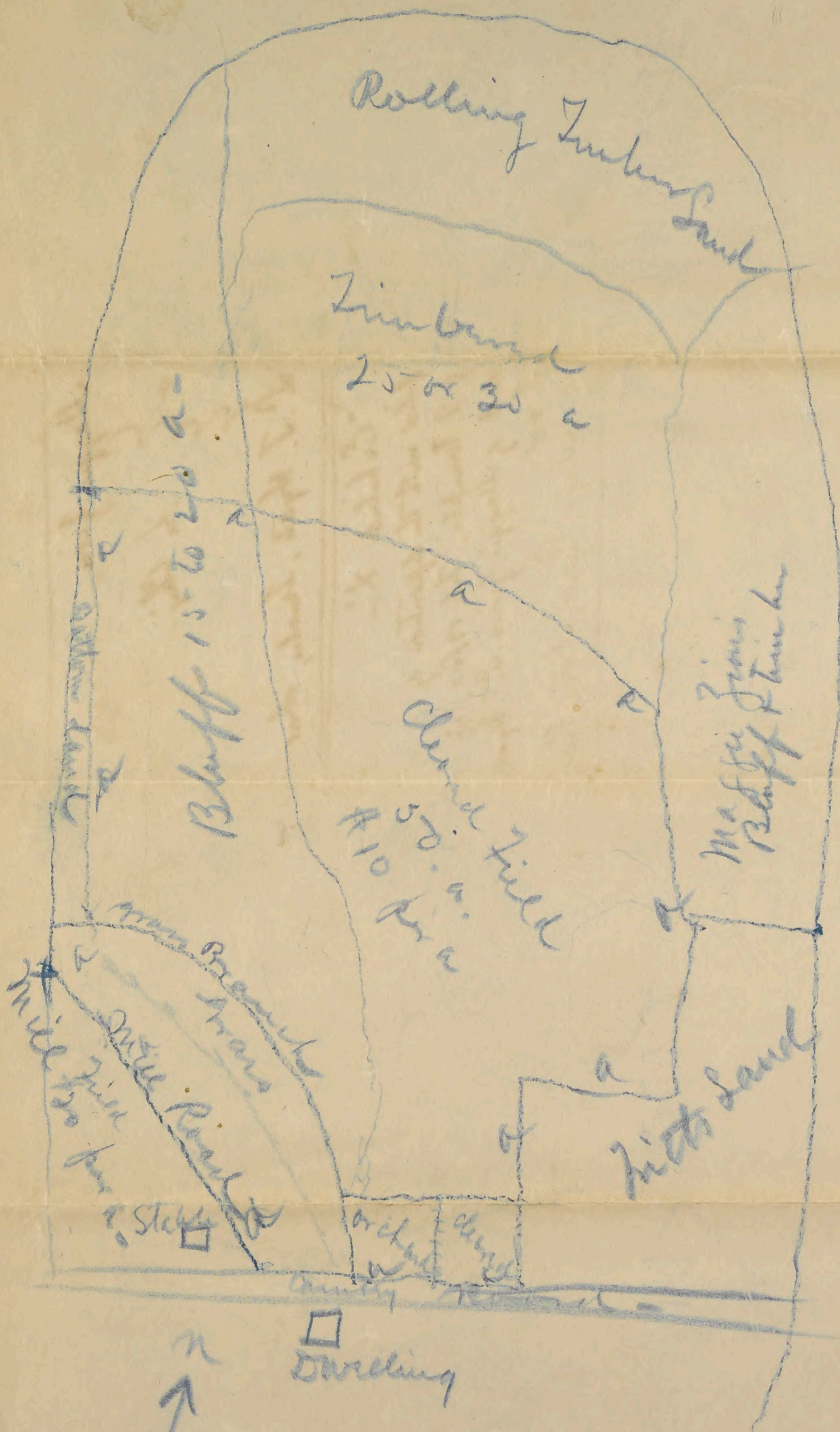


George W. Zion  
To & Deed  
L. T. Hyatt Trustee

Copy

Clerk 60 cts





"X 3"



E. X

Maggie Fion,

vs. In Chy-

L. T. Hyatt, Trustee, et al

"Exhibit X"

filed with the deposition of  
J. A. Wampler, Feb 13/03, in  
suit of Maggie Fion v. L. T. Hyatt  
Tr. & al.

Mayo Cabell, Notary Public



W. S. HURST, PRESIDENT

PENNINGTON GAP BANK

—TRANSACTS A—

GENERAL BANKING BUSINESS

SPECIAL ATTENTION GIVEN TO COLLECTIONS

A. G. HYATT, CASHIER

....We Want Your Account

R. E. Litton Esq Pennington Gap, Va., Nov 28 1901

My Dear Yours Dryden Va  
27<sup>th</sup> duly recd. Herewith find  
note properly Cancelled.

Also Blank for 200<sup>00</sup> @ 30 days. as requested  
Single name in this instance will be perfectly  
Satisfactory

You has not yet arranged his matter  
He promised to be sure & do so by next Saturday  
Yours will get others to sign with you as you before



Maggie Brown

Lu Ching

L. J. Hyatt, Jr., Secy

"Exhibit A."

Filed with the deposition  
of R. E. Linton, Feb. 12/03.

is not a Maggie Brown  
as L. J. Hyatt, Jr., Secy -

Mayo Calvert, H.P.

wrote me, I understand he intends  
to secure both you & whoever signs with  
you by a deed of trust.

Said when got it arranged would send  
to you the note for Renewal to Jan'y 1/902  
so you can sign & return to me.  
Awaiting same I remain,

Very truly  
Alfred



Dryden Va  
Nov. 12/1901

Mer. A. C. Hyatt  
Perrington Gap Va

Dear Sir

Enclosed find  
Dr. F. Ladd & Co. Check \$901<sup>85</sup>  
for Collection & place same  
to my Credit mail (and for  
same I have promised him  
to help him if he can get  
2 other good men on the Note.

Exhibit A. G. H. 101.

Mayo Cabell, M.D.

Respectfully  
R. E. Lillon



---

Exhibit "A.G. H. No. 1."  
filed with the deposition of  
A. G. Hyatt, Feb. 13/03  
in suit of Maggie Jeon  
v. L. T. Hyatt, Jr. et al  
Mayo Cabell, AP

---



LEE CIRCUIT COURT.

Zion,

vs In Chancery,

Pennington Gap Bank.

Pomeroy Sec. 856, Vol. 2, p. 1186

Mistake must be material and free from culpable negligence.

Page 1187:

"It is not every negligence that will stay the hand of the Court."

THE CONCLUSION FROM THE BEST AUTHORITIES SEEMS TO BE THAT THE NEGLECT MUST AMOUNT TO A VIOLATION OF A POSITIVE LEGAL DUTY. THE HIGHEST POSSIBLE CARE IS NOT DEMANDED. EVEN A CLEARLY ESTABLISHED NEGLIGENCE MAY NOT, OF ITSELF BE A SUFFICIENT GROUND FOR REFUSING RELIEF IF IT APPEAR THAT THE OTHER PARTY HAS NOT BEEN PREJUDICED THEREBY." Id.

Note same page.

But failure to read AN INSTRUMENT is not always such negligence as will bar relief. See the other portions of section 856 and notes from which it will appear that the true rule is that equity will grant or withhold relief according to the facts and circumstances of the particular case considered in the light of the general rules there laid down, but not controlled absolutely by those rules.

If we adhere to "rules" then one of them is that before you can impute such negligence to Mrs. Zion as will bar her from relief it must be shown that she omitted a legal duty when she failed to read the deed of trust.

We submit that in this she made no such omission.

Let a Court of Equity look at all the surrounding facts and circumstances and say who is guilty of negligence, not to say fraud or connivance at fraud against this woman.



The Pennington Gap Bank had loaned George Zion money for years at 8% to 12% (most generally 12%, we think). Finally Zion claimed P. E. Litton had endorsed for him. This Litton denied, and now sets the question at rest by his deposition that he did not endorse. The Cashier wants the matter fixed up.

He prepares a deed of trust (acknowledgment and all), and does not threaten Zion (Oh! No!), but he thinks may be he did tell Zion that Litton denied the signature on the notes, and the bank sends Zion forth to get that deed executed.

The Bank had been informed that Litton disputed his signature (which was quietly intimated to Zion) and it entrusted the execution of the deed to Zion. They did not go to Mrs. Zion themselves and lay the matter before her, but got George to procure her signature, at the same time intimating that Litton claimed his name had been forged.

Was not the bank bound to know that George might have to resort to some sort of fraud or artifice to induce his wife to encumber her property on whom there was not the least obligation legal or moral to make the sacrifice. The Bank knew George, knew the straights he was in, and yet entrusts him to get the paper executed. The Bank is bound by and must answer for his acts. It can not send him forth and repudiate in part the agency thus created. From deposition of A. G. Hyatt Question (p.27) "Did you never tell him that Mr. Litton said he had never signed the notes?" Ans (p.28) "I think I did tell him so at the time. I prepared the deed of trust for Zion and his wife to sign I believe". Same page: A part of answer to Cross Q. 4: "I asked that the deed of trust be given to secure the note". Mr. Hyatt, as all the testimony shows was the Bank. He asked it and he told Zion Litton denied endorsing. He prepared the deed of trust,



gave it to Zion, and requested that he get it executed. "I asked that the deed of trust be given to secure the note."

There can, therefore, be no equitable contention on the part of the bank that Mrs. Zion is in any way estopped from having the relief prayed for.

All authorities agree that the deed must be read. In fact, reading is an essential part of the deed to make it valid, and if misread it is void.

Zion and the Justice (the latter innocently, we think) did worse than misreading the deed. They both mis-represented it from start to finish. She might be censured by some who didn't know as much about George as she did, (not the Pennington Gap Bank, however) for taking his word, but how can she be censured and charged with any negligence when the very officer of the law sent to take her acknowledgment by his acts, conduct and words confirmed and corroborated the false statement made by George. Stress, however, seems to be laid (judging by the Cross-Examination) on the fact that Mrs. Zion could have read the deed for herself. This is only a circumstance, however, (no bar) in any case, and in this case a circumstance that is entitled to but very little, if any, weight. Whatever might be said as to the law elsewhere, the rule is well settled in Virginia by the case of Harrison vs. Middleton, 11th Gratt, pp. 549, 548 & 551. In which case Judge Moncure cites some of the dicta that our friends seem to rely on, and then says: "It does not certainly appear whether the defendant in this case was unlettered or not. His signature to the deed purports to have been made by himself, and the presumption therefore is that he was not. But the admissibility of evidence tending to prove fraud in the execution of an instrument does not depend upon the fact that the party whose deed it purports to be was unlettered, though the weight of the evidence



is materially increased thereby."

The circumstance that she can read would only be considered in a case where there was doubt as to whether she understood the wording of the instrument or not. There is no contention here that Mrs. Zion either had the deed read to her, or was correctly informed as to its contents.

She was prevented from reading it by misrepresentation of George Zion, to whom the deed had been entrusted by the Bank to secure its execution, a misrepresentation that deceived the very elect-Justice Orr, and who by his acquiescence gave countenance and confirmation (though innocently) to the fraud. Estoppel indeed!

#### AS TO THE PARTITION.

It is ~~sub~~mitted, ~~that~~ an examination of the evidence will show, that even if the Bank had any right to dispute the validity of the partition between Zion and wife, the said partition is, nevertheless, a fair and just one that has been made by two disinterested citizens of the county, and judging from the outside testimony taken the said two citizens have certainly come as near settling it justly as any set of Commissioners could be expected to do. There is always a difference of opinion as to values, which is exemplified in this case, but outside of one or two extreme witnesses, who would place Mrs Zion's part as worth double the part assigned to George, but who utterly failed to sustain themselves on Cross Examination, All the testimony confirms the division made as a just one. Especially, when you take into consideration the valuable lot of timber that was upon the land at the time of the partition. On this point we refer to the last deposition of D. S. Litton who was and is quite familiar with this



feature. George Zion got in this partition several hundred dollars worth of timber. That is not there now, it has been cut and carried away, and the proceeds partially at least paid over to this very defendant. Even the testimony of defendants' witnesses show that the part assigned to George is sufficient to pay the Bank's debt.



Maggie Zion. - -

ads.

L. T. Hyatt, trustee et al.

And said defendant not waiving her defence made by way of answer to the cross bill of ~~said complainant~~ the defendant, but here again expressly reiterating the same, and her again expressly denying that she is the surety to the Pennington Gap Bank by deed of trust or in any otherwise for any debt, by way of further plea says, that the said supposed debt asserted by the Cross-Complainants in their bill was for the loan and forbearance of money at a greater rate of interest than 6%, to-wit, at a rate of interest varying from 3% to 12%, and she avers that there is included in and constitutes a part of the debt asserted by said cross-complainant, which is made of usurious interest entirely, the sum of \$1200.00, which sum she asks may be set off against a like amount of said cross-complainant's demand, and this &c.

E M Fulton }  
J B Kell } For  
C. L. Duncan } Deft Maggie  
Zion.



In the Supreme Court of Appeals of Virginia,

AT WYTHEVILLE.

SESSION 1904.

---

L.T.Hyatt, Trustee, et al

vs.

Maggie Zion,

---

From the Circuit Court of Lee County.

---

Brief of J.C.Noel, for the defendant in error.

We will follow in this brief the same order discussion as has been introduced by the petitioners in error for an appeal and supersedeas.

(I)

Did the court err in its decree of march 9th, 1903, in overruling the demurrer of the petitioners?

We think not. Two grounds of demurrer are assigned. First, that the bill of complaint does not allege participation in or knowledge of the fraud complained of on the part of said petitioners; second, that the bill does not allege in terms, or ~~in~~ facts from which the inference must be drawn, that George W. Zion was the agent of the Pennington Gap Bank in procuring the deed of trust sought to be set aside as to the said Maggie Zion, etc.

It was not necessary to allege the first in said bill. If the bill alleges such a state of facts from which the inference may be reasonably drawn that the said Zion was acting as the agent of said bank, or if the agency be sufficiently alleged; or if said bill shows that the said bank accepted the benefits of the deed of trust as secured by said Zion from his wife, the said bank will be inferred to have had knowledge of and to have participated in said fraud. (See Crump & Co. vs U.S. Mining Co., 7 Gratt., 369; Owen vs Boyd Land Co. 95 Va., 560; Harveys Adm'r. etc, vs Steptoe's Adm'r et als, 17 Gratt, 303.)

Now the following language in the said bill substantially alleg



es that the said George W. Zion was acting as the agent for said bank at the time said deed of trust was procured, to-wit:

Your oratrix will now show your honor that her said husband some time in the year 1901, or possibly as far back as the year, 1900, borrowed from W.S. Hurst, A.G. Hyatt, J.A.G. Hyatt, P.H. Allen, J. V. Graham, and M.K. Graham, partners doing business as bankers under the firm name and style of Pennington Gap Bank, of Pennington Gap, Virginia, the sum of seventeen hundred dollars, (\$1700.00) which he failed to pay when the same became due, and the said Pennington Gap Bank became very anxious to obtain from the said Geo. W. Zion some additional security, as there arose some dispute as to the liability of one R.E. Litton, whom the bank claimed to be an endorser of or surety on the note which he the said Geo. W. Zion had executed to said bank, as your orator believes and charges the said bank made threats against the said Geo. W. Zion, possibly of intended prosecutions against him; at all events, the said bank brought great influence to bear upon the said Geo. W. Zion inducing in him a great desire to give the bank further security, and thereupon the said bank through one of its members A.G. Hyatt drew up the deed of trust hereinafter referred to, and delivered the same to the said Geo. W. Zion, urging him verely strongly to secure its execution, as your oratrix believes and alleges."

Does not that language substantially allege that said Geo. W. Zion was the agent of said bank? We submit that it does, and the court did not err in overruling said demurrer.

A principal is not entitled to the benefit of any fraud committed by his agent, although the former was ignorant of its commission. (Gordon vs Jeffrey 2 Leigh, 410).

(2)

It is alleged that the court erred in not setting aside the partition of the lands in controversy, as made between Geo. W. and Maggie Zion.

We are of the opinion that the evidence clearly shows that the partition was as fair and equitable as it was possible to be made, if it were done by order of the court.



The burden of proof was clearly on the petitioners to show that partition was not a just and equitable one. Yet, when we examine the testimony of the witnesses together with their opportunities for knowing the facts concerning which they testify, the proof is over whelming in favor of the fairnes of the partition.

The witnesses for the petitioners based their testimony upon a casual observance of the land without any estimate of the real or relative value of the said land. While on the other hand each witness introduced by the defendant in error had gone over said lands with a view of ascertaining both the real and relative values of the respective shares?—men who knew what they were testifying about.

Taking the testimony of A.K. McClure, J.M. Wampler, A.B. Wolf, J.E. Hobbs, Larkin Herndon, John M. Smyth Jr., and Dixon S. Litton, and making proper allowance for the timber on the land at the time the partition was made, and we are driven to the conclusion that the land assigned to Geo. W. Zion was worth at least \$4000.00.

The fact that this land sold at a judicial sale, for only \$1700. is no evidence of the real worth thereof. Purchasers are universally afraid of a court title; and well they may be as long as the doctrine of caveat emptor prevails in all its rigor.

But said petitioners have no ground of complaint on this score. They asked for a sale of the lands of said Zion, their request was granted, the sale made and the cashier of the bank became the purchaser, presumably for the bank at the price of \$1700.00,—less than one half of its real value; the said sale was confirmed at their own instance based on the report of their own attorney. Therefore a re-partition is impossible.

(3)

Was the complainant, Mrs. Zion, estopped to deny the validity of the deed of trust in controversy as against the partitioners?

There are circumstances under which a person executing a deed of trust would be estopped from saying that it was procured by fraud. But this not such a case. For instance if through the influ-



ence or misrepresentation of G.W.Zion, Mrs Zion had been induced execute a deed of trust in favor of said bank, without the connivance of said bank in any way, and on the actual belief on the part of said bank that the deed had been executed in good faith, it had parted with its money, or otherwise have altered its condition for the worse, she, perhaps, would have been estopped from saying it was procured by fraud and misrepresentation, unless she ~~had~~ should make good the injury sustained, but even this is doubtful.

But in this case the bank had already parted with its money, on a forged note, and had no security at all; its condition could not be altered for the worse, - the reputed endorser denies the signature the principal is confronted with the fact that the endorser claims the note to be a forgery, and he does not even deny it to be forged.

What is to be done about it? The cashier writes R.E. Litton to know if he will help secure the debt if two or three other good men will also endorse with him, Litton promises, but the other good men cannot be found and Litton advises, the Bank to get a deed of Trust on Zion's land, and this Zion and the cashier prepares to do.

The cashier carefully prepares the deed of trust as he wants it, takes G.W.Zion's individual note as evidence of the debt, and sends the self admitted forger forth to secure from his unsuspecting wife the coveted deed of trust, even concealing from her the existence of the debt, by not requiring her to sign the note as well as the deed of trust; and with the ready prepared deed of trust in his pocket, this forger goes by the home of the Justice of the Peace and takes him with, and while on the way he carefully prepares the said justice telling him that he wants him to take his and his wife's acknowledgement to a deed for some lots at Big stone Gap, which he is selling to Kate Irvine, and when he arrives at home he tells his unsuspecting wife the same story told to the justice, and is in too much of a hurry to have the paper read, thus making the justice an unsuspecting accomplice in the crime. Yet these petitioners claim that the deed of trust came to them in the regular course of business without the least suspicion that any fraud had been committed, and that their condition by



reason of the extention of time, had been changed for the worse.

The whole transact'ion stinketh to high Heaven with fraud, ~~the~~ perpetrated by Zion and the connivance, at least, thereof by said bank. At least the bank knew that G.W. Zion had perpetrated a fraud on it once, and it should have been on its guard against any acts of that kind.

The condition of said bank instead of being changed for the worse was made infinitely better by getting a deed of trust on G.W. Zions part of said land, thus securing a debt for which it had no security. Because nothing is clearer than that Litton's name had been forged to the note, a fact to which Litton has already testified, and which the said Zion did not deny.

Again, if Litton, had have endorsed said notes, he is not relieved from the payment thereof, by the fact that the notes have been canceled and surrendered, if such cancellation and surrender has been made by mistake or though fraud. The testimony of A.G. Hyatt and W.S. Hurst supported by that of Geo. W. Zion would be sufficient overcome the denial of Litton. So where is the bank injured?

The evidence in the case, taken all to gether, clearly establishes the fact that Zion was acting as the agent of the bank in securing the deed of trust from his wife; and if the agent, the bank is properly bound by any and all of his fraudulent representations, whether it had knowledge thereof or not.

But, even if the bank accepted the benefit of his fraudulent act, though not its authorized agent, it is bound thereby whether it had knowldge thereof or not. There is no better settled principle of law in Virginia than this.

In the case of Crump &c. vs. U.S. Mining CO., 7 Gratt., 369 the court quoted and adopted the following from Paley Agency:

Contracts made for the benefit of another, but without his privity or consent, may be rejected or affirmed at his election. But by making the election to affirm it, he adopts that which is detrimental as well as that which is for his benefit. And in seeking to enforce contracts entered into by agents, the principal is subject to have them impeached by any conduct of his agent which would have that effect if proceeding from himself. Every species of fraud, misrepresentation, or concealment, therefore in the agent, affects



the principal's right to recovery.

again, this court said in the case of Owen vs Boyd Land Co.,

One who accepts the benefits of a contract made for him by an unauthorized agent, is bound by the representations made by ~~that~~ such agent to induce the contract, whether he had notice of such representation at the time he accepted the benefits of the contract or not.

There being no error in the action of the lower court, its action should be affirmed.

Respectfully submitted,

J.C.Noel,  
Counsel for appellee.



To W.S.Hurst,A.G.Hyatt,J.A.G.Hyatt,P.H.Allen,M.K.Graham,and J.V. Graham,partners and private bankers,doing business under the style and firm name of Pennington Gap Bank,L.T.Hyatt,Trustee,and Geo.W. Zion:

Take notice,that on the 12th day of February,1903,at the office of J.C.Noel,in the town of Pennington Gap,in Lee county,Virginia, between the hours of 9 o'clock,A.M.,and 6 o'clock,P.M.,of that day, I shall Proceed to take the depositions of W.T.Orr and others,to be read in ~~my~~ evidence in my behalf in the suit in equity depending in the Circuit Court of Lee County,Virginia,in which I am plaintiff and you are defendants;and if from any cause the taking of the said depositions be not commenced on that day,or if commenced if they be not completed on that day,the taking of said depositions will be adjourned and continued from time to time and from place to place and between the same hours until they are completed.

Respectfully,

*Maggie Zion,*  
*By Counsel.*



Maggie Zion  
vs In Chancery

Pennington Gap Bank et al

Notice to take Depositions

Legal service of the  
within notice is hereby  
accepted. Jan'y 29/90 B

L. P. Hyatt & Son  
Pennington Gap Bank

J. V. Graham

W. K. Graham

P. H. Seelin

J. A. S. Hyatt

L. P. Hyatt, Trustee.

W. S. Hurst

Geo. H. Zion



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

*again*  
WE COMMAND YOU, That you summon *G. M. Zion, L. T. Hyatt trustee*  
*and W. S. Hurst, G. M. Zion, A. G. Hyatt, J. A. G. Hyatt*  
*P. H. Allen, J. V. Graham, and M. R. Graham partners*  
*doing a banking business under the firm name and style of*  
*Pennington Gap Bank.*  
to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the *3<sup>d</sup>* Monday in *Sept*, 190*2*, to answer a  
bill in chancery exhibited against *M. Zion* in our said court by  
*Maggie Zion*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court,  
at the court-house, the *3<sup>rd</sup>* day of *Sept*, 190*2*, and in the *127<sup>th</sup>*  
year of the Commonwealth.

*A. B. Munsey, Clerk.*



Maggie Zion

vs.

SUBPOENA

IN CHANCERY.

Gen W Zion et al

J. L. Noel p. q.

To 2<sup>nd</sup> Sept Rules.

1902, Circuit Court.

Executed Sept the 4 - 1902  
by delivering a true copy  
of the within summons  
to Gen. W. Zion in  
Person.

D. B. Brington D. S.  
for W. G. McLehman  
S. L. C.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *G. H. Zion, L. T. Hyatt trustee*  
*and W. S. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. V. Graham*  
*and M. K. Graham partners doing business under the*  
*firm name and style of Pennington Gap Bank*  
to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the *1st* Monday in *September*, 190*2*, to answer a  
bill in chancery exhibited against *them* in our said court by  
*Maggie Zion*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court,  
at the court-house, the *12<sup>th</sup>* day of *August*, 190*2*, and in the *127<sup>th</sup>*  
year of the Commonwealth.

*A. B. Munsey*, Clerk.



See Copy on  
G. H. Gion  
L. T. Hyatt Trustee  
W. S. Hurst  
A. S. Hyatt  
J. A. S. Hyatt  
P. H. Allen  
J. V. Graham &  
M. K. Graham

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Maggie Gion  
vs. }  
SUBPOENA  
IN CHANCERY.  
G. H. Gion et als

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J. L. Noel p. q.

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To 1st September Rules.  
1902. Circuit Court.

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Executed by delivering true  
copy of the within Subpoena  
to the within Parties.  
This September the 1st  
1902. D. B. Byington  
D. S. for W. J. Milburn  
S. L. C.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon G. W. Gion, L. T. Hyatt trustee  
and Mrs. Hurst, A. G. Hyatt, J. A. G. Hyatt, P. H. Allen, J. W. Graham  
and M. K. Graham partners doing business under the  
firm name and style of Pennington Gap Bank  
to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the 1st Monday in September 1902, to answer a  
bill in chancery exhibited against them in our said court by  
Maggie Gion

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court,  
at the court-house, the 12<sup>th</sup> day of August, 1902, and in the 127<sup>th</sup>  
year of the Commonwealth.

A B Munsey, Clerk.



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Maggi Zion

vs. {  
SUBPOENA  
IN CHANCERY.

Geo. H. Zion et al

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p. q.

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To Rules.

Court.

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Not Executed  
not received in  
time this Sept 11 1802

S. P. Ely D<sup>r</sup>  
for W<sup>m</sup> Muleham

S. L. 16